TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

This title was enacted by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378

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PART I—THE AGENCIES GENERALLY

CHAPTER 1—ORGANIZATION

§ 101. Executive departments

The Executive departments are:
The Department of State.
The Department of the Treasury.
The Department of Defense.
The Department of Justice.
The Department of the Interior.
The Department of Agriculture.
The Department of Commerce.
The Department of Labor.
The Department of Health, Education, and Welfare.
The Department of Housing and Urban Development.
The Department of Transportation.
The Department of Energy.

(As amended Pub. L. 95-91, title VII, § 710(a), Aug. 4, 1977, 91 Stat. 609.)

AMENDMENTS

1977—Pub. L. 95-91 included The Department of Energy in the listing of Executive departments.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 6001; title 28 section 451; title 31 section 638a; title 41 sections 403, 502, 601.

§ 102. Military departments

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 6001; title 29 sections 203, 633a; title 41 sections 48b, 403, 502, 601; title 42 section 2000e-16.

§ 104. Independent establishment

For the purpose of this title, "independent establishment" means—

(1) an establishment in the executive branch (other than the United States Postal Service or the Postal Rate Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and

(2) the General Accounting Office.

[1] Part heading amended without corresponding change in title analysis.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379; Pub. L. 91-375, § 6(c)(2), Aug. 12, 1970, 84 Stat. 775.)

CODIFICATION

Section is set out in this supplement to correct typographical error appearing in the main edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 41 sections 403, 502, 601.

§ 105. Executive agency

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5948 of this title; title 12 section 1749bbb-10b; title 15 section 3301; title 16 section 2602; title 22 section 2685; title 29 sections 203, 633a; title 41 section 48b; title 42 sections 2000e-16, 4071, 4902, 6361, 6964, 7911, 8241; title 43 section 2003; title 50 section 1601.

CHAPTER 3—POWERS

§ 305. Systematic agency review of operations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7204 of this title; title 10 sections 4540, 7212, 9540.

CHAPTER 5—ADMINISTRATIVE PROCEDURE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 2 section 437d; title 12 sections 1464, 1730, 1730a, 1786, 1818; title 15 sections 637, 687e, 2703; title 16 section 460aa-3; title 18 section 4218; title 20 section 240; title 21 section 343; title 25 section 954; title 29 section 828; title 30 section 811; title 39 sections 204, 410, 3001, 3603; title 43 section 1740; title 49 section 1655.

SUBCHAPTER I—GENERAL PROVISIONS

§ 500. Administrative practice; general provisions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 3401; title 49 section 10308.

SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 556, 559, 572, 7118, 7134, 8902 of this title; title 2 sections 501, 502; title 7 sections 136d, 1642, 2049; title 12 sections 1749bbb-17, 1959; title 15 sections 78ggg, 266, 1392, 1715, 3412; title 16 sections 460aa-3, 470q; title 17 sections 701, 803; title 19 section 1337; title 20 sections 107d-2, 641; title 21 sections 811, 824, 875; title 22 sections 277d-24, 1623; title 25 section 372-1, 954; title 28 section 509; title 29 sections 156, 164, 213, 308f, 481, 628, 792, 1137; title 30 section 184; title 31 sections 1062, 1262; title 33 sections 524, 597; title 39 section

3008; title 41 section 43a; title 42 sections 263f, 2000e-12, 2231, 2236, 3766, 6212, 6393, 7191, 7420; title 43 section 1624; title 46 section 239b; title 47 sections 303, 305, 310, 409; title 49 sections 1348, 1355, 1481, 1655, 1672, 10705, 10724, 10925, 10928, 10929, 11123, 11124, 11125, 11127, 11349; title 50 sections 167h, 795, 835; title 50 App. sections 463, 1221, 2159.

§ 551. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 500, 552, 572, 701, 3344 of this title; title 2 sections 501, 502; title 15 sections 78d-1, 78w, 632, 637c, 766, 2053, 3412, 3416; title 26 sections 6103, 9041; title 30 section 956; title 31 section 1701; title 42 sections 2231, 6107, 6393, 7191; title 47 sections 155, 409; title 50 App. sections 2168, 2407.

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

[*See main edition for text of* (1) *to* (3)]

(4) [*See main edition for text of* (A) *to* (E)]

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

[*See main edition for text of* (G), (5) *and* (6); (b)]

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

[*See main edition for text of* (d) *and* (e)]

(As amended Pub. L. 95-454, title IX, § 906(a)(10), Oct. 13, 1978, 92 Stat. 1225.)

CODIFICATION

Subsec. (c) is set out in this supplement to correct typographical error appearing in the main edition.

AMENDMENTS

1978—Subsec. (a)(4)(F). Pub. L. 95-454 substituted references to the Special Counsel for references to the Civil Service Commission wherever appearing therein and reference to his findings for reference to its findings.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SHORT TITLE

This section is popularly known as the Freedom of Information Act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 551, 552a, 552b, 1206, 7133 of this title; title 2 sections 472, 501, 502; title 7 section 1642; title 15 sections 18a, 78m, 78w, 78x, 78ggg, 719d, 773, 796, 1314, 1418, 2055, 2217, 2613, 3364; title 16 sections 1100b-5, 1402; title 19 section 160; title 20 sections 2836, 2837; title 21 sections 360d, 360j, 379, 830; title 25 section 1951; title 26 section 6110; title 31 section 1052; title 33 sections 524, 941, 1513; title 39 section 410; title 42 sections 242k, 300v-2, 2996d, 3527, 4332, 5916, 5919, 6272-6274, 6346, 7135, 8103; title 44 sections 2201, 2204, 2206; title 45 section 546; title 46 section 1463; title 49 sections 1357, 1805, 1806, 1905, 10310, 10706, 11346; title 50 App. sections 463, 1221, 2158, 2158a, 2159.

§ 552a. Records maintained on individuals

PRIVACY PROTECTION STUDY COMMISSION

Section 5 of Pub. L. 93-579, as amended by Pub. L. 95-38, June 1, 1977, 91 Stat. 179, provided that:

[*See main edition for text of* (a) *to* (f)]

"(g) The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this section. The Commission shall make a final report to the President and to the Congress on its findings pursuant to the study required to be made under subsection (b)(1) of this section not later than two years from the date on which all of the members of the Commission are appointed. The Commission shall cease to exist on September 30, 1977.

[*See main edition for text of* (h)]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 552b, 7133 of this title; title 16 sections 410cc-35, 1536; title 26 section 6103; title 38 section 3301; title 39 section 410; title 42 section 3525; title 44 section 2906.

§ 552b. Open meetings

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 552 of this title; title 39 section 410; title 42 sections 2996c, 7171, 7234, 8103; title 44 section 2204.

§ 553. Rule making

EX. ORD. NO. 12044. IMPROVING GOVERNMENT REGULATIONS

Ex. Ord. No. 12044, Mar. 23, 1978, 43 F.R. 12661, provided:

As President of the United States of America, I direct each Executive Agency to adopt procedures to improve existing and future regulations.

SECTION 1. *Policy.* Regulations shall be as simple and clear as possible. They shall achieve legislative goals effectively and efficiently. They shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments.

To achieve these objectives, regulations shall be developed through a process which ensures that:

(a) the need for and purposes of the regulation are clearly established;

(b) heads of agencies and policy officials exercise effective oversight;

(c) opportunity exists for early participation and comment by other Federal agencies, State and local governments, businesses, organizations and individual members of the public;

(d) meaningful alternatives are considered and analyzed before the regulation is issued; and

(e) compliance costs, paperwork and other burdens on the public are minimized.

SEC. 2. *Reform of the Process for Developing Significant Regulations.* Agencies shall review and revise their procedures for developing regulations to be consistent with the policies of this Order and in a manner that minimizes paperwork.

Agencies' procedures should fit their own needs but, at a minimum, these procedures shall include the following:

(a) *Semiannual Agenda of Regulations.* To give the public adequate notice, agencies shall publish at least semiannually an agenda of significant regulations under development or review. On the first Monday in October, each agency shall publish in the FEDERAL REGISTER a schedule showing the times during the coming fiscal year when the agency's semiannual agenda will be published. Supplements to the agenda may be published at other times during the year if necessary, but the semiannual agendas shall be as complete as possible. The head of each agency shall approve the agenda before it is published.

At a minimum, each published agenda shall describe the regulations being considered by the agency, the need for and the legal basis for the action being taken, and the status of regulations previously listed on the agenda.

Each item on the agenda shall also include the name and telephone number of a knowledgeable agency official and, if possible, state whether or not a regulatory analysis will be required. The agenda shall also include existing regulations scheduled to be reviewed in accordance with Section 4 of this Order.

(b) *Agency Head Oversight.* Before an agency proceeds to develop significant new regulations, the agency head shall have reviewed the issues to be considered, the alternative approaches to be explored, a tentative plan for obtaining public comment, and target dates for completion of steps in the development of the regulation.

(c) *Opportunity for Public Participation.* Agencies shall give the public an early and meaningful opportunity to participate in the development of agency regulations. They shall consider a variety of ways to provide this opportunity, including (1) publishing an advance notice of proposed rulemaking; (2) holding open conferences or public hearings; (3) sending notices of proposed regulations to publications likely to be read by those affected; and (4) notifying interested parties directly.

Agencies shall give the public at least 60 days to comment on proposed significant regulations. In the few instances where agencies determine this is not possible, the regulation shall be accompanied by a brief statement of the reasons for a shorter time period.

(d) *Approval of Significant Regulations.* The head of each agency, or the designated official with statutory responsibility, shall approve significant regulations before they are published for public comment in the FEDERAL REGISTER. At a minimum, this official should determine that:

(1) the proposed regulation is needed;

(2) the direct and indirect effects of the regulation have been adequately considered;

(3) alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;

(4) public comments have been considered and an adequate response has been prepared;

(5) the regulation is written in plain English and is understandable to those who must comply with it;

(6) an estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation;

(7) the name, address and telephone number of a knowledgeable agency official is included in the publication; and

(8) a plan for evaluating the regulation after its issuance has been developed.

(e) *Criteria for Determining Significant Regulations.* Agencies shall establish criteria for identifying which regulations are significant. Agencies shall consider among other things: (1) the type and number of individuals, businesses, organizations, State and local governments affected; (2) the compliance and reporting requirements likely to be involved; (3) direct and indirect effects of the regulation including the effect on competition; and (4) the relationship of the regulations to those of other programs and agencies. Regulations that do not meet an agency's criteria for determining significance shall be accompanied by a statement to that effect at the time the regulation is proposed.

SEC. 3. *Regulatory Analysis.* Some of the regulations identified as significant may have major economic consequences for the general economy, for individual industries, geographical regions or levels of government. For these regulations, agencies shall prepare a regulatory analysis. Such an analysis shall involve a careful examination of alternative approaches early in the decisionmaking process.

The following requirements shall govern the preparation of regulatory analyses:

(a) *Criteria.* Agency heads shall establish criteria for determining which regulations require regulatory analyses. The criteria established shall:

(1) ensure that regulatory analyses are performed for all regulations which will result in (a) an annual effect on the economy of $100 million or more; or (b) a major increase in costs or prices for individual industries, levels of government or geographic regions; and

(2) provide that in the agency head's discretion, regulatory analysis may be completed on any proposed regulation.

(b) *Procedures.* Agency heads shall establish procedures for developing the regulatory analysis and obtaining public comment.

(1) Each regulatory analysis shall contain a succinct statement of the problem; a description of the major alternative ways of dealing with the problem that were considered by the agency; an analysis of the economic consequences of each of these alternatives and a detailed explanation of the reasons for choosing one alternative over the others.

(2) Agencies shall include in their public notice of proposed rules an explanation of the regulatory approach that has been selected or is favored and a short description of the other alternatives considered. A statement of how the public may obtain a copy of the draft regulatory analysis shall also be included.

(3) Agencies shall prepare a final regulatory analysis to be made available when the final regulations are published.

Regulatory analyses shall not be required in rulemaking proceedings pending at the time this Order is issued if an Economic Impact Statement has already been prepared in accordance with Executive Orders 11821 and 11949 [set out as notes under section 1904 of Title 12, Banks and Banking].

SEC. 4. *Review of Existing Regulations.* Agencies shall periodically review their existing regulations to determine whether they are achieving the policy goals of this Order. This review will follow the same procedural steps outlined for the development of new regulations.

In selecting regulations to be reviewed, agencies shall consider such criteria as:

(a) the continued need for the regulation;

(b) the type and number of complaints or suggestions received;

(c) the burdens imposed on those directly or indirectly affected by the regulations;

(d) the need to simplify or clarify language;

(e) the need to eliminate overlapping and duplicative regulations; and

(f) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the regulation.

Agencies shall develop their selection criteria and a listing of possible regulations for initial review. The criteria and listing shall be published for comment as required in Section 5. Subsequently, regulations selected for review shall be included in the semiannual agency agendas.

SEC. 5. *Implementation.*

(a) Each agency shall review its existing process for developing regulations and revise it as needed to comply with this Order. Within 60 days after the issuance of the Order, each agency shall prepare a draft report outlining (1) a brief description of its process for developing regulations and the changes that have been made to comply with this Order; (2) its proposed criteria for defining significant agency regulations; (3) its proposed criteria for identifying which regulations require regulatory analysis; and (4) its proposed criteria for selecting existing regulations to be reviewed and a list of regulations that the agency will consider for its initial review. This report shall be published in the FEDERAL REGISTER for public comment. A copy of this report shall be sent to the Office of Management and Budget.

(b) After receiving public comment, agencies shall submit their revised report to the Office of Management and Budget for approval before final publication in the FEDERAL REGISTER.

(c) The Office of Management and Budget shall assure the effective implementation of this Order. OMB shall report at least semiannually to the President on the effectiveness of the Order and agency compliance with its provisions. By May 1, 1980, OMB shall recommend to the President whether or not there is a continued need for the Order and any further steps or actions necessary to achieve its purposes.

SEC. 6. *Coverage.*

(a) As used in this Order, the term regulation means both rules and regulations issued by agencies including those which establish conditions for financial assistance. Closely related sets of regulations shall be considered together.

(b) This Order does not apply to:

(1) regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557);

(2) regulations issued with respect to a military or foreign affairs function of the United States;

(3) matters related to agency management or personnel;

(4) regulations related to Federal Government procurement;

(5) regulations issued by the independent regulatory agencies; or

(6) regulations that are issued in response to an emergency or which are governed by short-term statutory or judicial deadlines. In these cases, the agency shall publish in the FEDERAL REGISTER a statement of the reasons why it is impracticable or contrary to the public interest for the agency to follow the procedures of this Order. Such a statement shall include the name of the policy official responsible for this determination.

SEC. 7. This Order is intended to improve the quality of Executive Agency regulatory practices. It is not intended to create delay in the process or provide new grounds for judicial review. Nothing in this Order shall be considered to supersede existing statutory obligations governing rulemaking.

SEC. 8. Unless extended, this Executive Order expires on June 30, 1980.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 552a, 556, 1103, 1105 of this title; title 2 sections 501, 502; title 7 sections 2013, 2014; title 15 sections 18a, 57a, 78s, 78ggg, 789, 1193, 1203, 1262, 1410b, 1474, 1476, 1693b, 1912, 2058, 2079, 2082, 2309, 2603, 2604, 2605, 2618, 2703, 2823, 3412; title 16 sections 971d, 1381, 1463, 1533, 1535, 1604, 1821, 1855; title 18 sections 4201, 4218; title 20 sections 1132a-5, 1232; title 21 sections 358, 360d, 463, 1176; title 29 section 828; title 30 sections 811, 936, 1211; title 33 sections 1231, 1322, 1504; title 40 section 333; title 41 sections 43a, 47; title 42 sections 300g-1, 300h, 300k-1, 2210a, 3535, 4905, 5403, 5506, 5918, 5919, 6306, 6392, 7191, 7607, 8372, 8411; title 43 section 1740; title 44 section 2206; title 45 sections 431, 502, 562; title 46 section 391a; title 49 sections 1348, 1387, 1804, 10326, 10362, 11350; title 50 App. sections 2158, 2158a, 2168, 2407.

§ 554. Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;

(2) the selection or tenure of an employee, except a[1] administrative law judge appointed under section 3105 of this title;

[*See main edition for text of (3) to (6); (b) to (e)*]

(As amended Pub. L. 95-251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-251 substituted "administrative law judge" for "hearing examiner".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 552b, 556, 557, 8124 of this title; title 2 sections 501, 502; title 7 sections 86, 87e, 87f-1, 2048; title 12 sections 93, 504, 505, 1464, 1730, 1730a, 1786, 1817, 1818, 1828, 1847, 1972, 3413; title 15 sections 78d-1, 2064, 2066, 2605, 2615, 3412; title 16 sections 796, 1030, 1536, 1540, 1856, 1858, 2407, 2602; title 18 section 4218; title 19 section 160; title 20 section 1234; title 21 sections 321, 360e; title 29 sections 216, 659; title 30 sections 185, 804, 811, 815, 817, 818, 821, 938, 1264, 1268, 1275, 1293; title 33 sections 919, 1367, 1504; title 42 sections 2000e-17, 4910, 6303, 6971, 7419, 7607, 7920, 8220, 8433; title 43 sections 1766, 1817, 1845; title 45 section 432; title 47 sections 409, 503; title 50 App. sections 2168, 2405, 2407.

§ 555. Ancillary matters

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 16 section 1536; title 18 section 4218; title 19 section 160; title 42 section 7607; title 43 section 1817; title 50 App. sections 2168, 2405, 2407.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

[*See main edition for text of (a)*]

(b) There shall preside at the taking of evidence—

(1) the agency;

[1] So in original.

(2) one or more members of the body which comprises the agency; or

(3) one or more administrative law judges appointed under section 3105 of this title.

[See main edition for text of closing par.; (c) to (e)]

(As amended Pub. L. 95-251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183.)

AMENDMENTS

1978—Subsec. (b)(3). Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 553, 554, 557, 558, 706, 3105 of this title; title 2 sections 501, 502; title 7 sections 86, 87e, 87f-1; title 15 sections 57a, 2605, 3412; title 16 sections 796, 1536, 2602; title 18 section 4218; title 19 section 160; title 20 section 1234; title 21 sections 321, 376; title 22 section 1037a; title 30 section 811; title 39 sections 404, 3624, 3661; title 42 sections 2241, 7171, 7607; title 43 section 1817; title 47 section 155; title 50 App. sections 2168, 2405, 2407.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 553, 554, 556, 558, 706, 3105 of this title; title 2 sections 501, 502; title 7 sections 86, 87e, 87f-1; title 15 sections 57a, 2605, 3412; title 16 sections 796, 2602; title 18 section 4218; title 19 section 160; title 20 section 1234; title 21 section 321; title 30 sections 811, 823; title 39 sections 404, 3624, 3661; title 42 sections 2241, 7607; title 49 section 10327; title 50 App. sections 2168, 2405, 2407.

§ 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title; title 42 section 2236; title 45 section 312; title 50 App. sections 2168, 2407.

§ 559. Effect on other laws; effect of subsequent statute

This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5372, and 7521 of this title, and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or otherwise. Subsequent statute may not be held to supersede or modify this subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2)(E), 5372, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to administrative law judges, except to the extent that it does so expressly.

(As amended Pub. L. 95-251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, title VIII, § 801(a)(3)(B)(iii), Oct. 13, 1978, 92 Stat. 1221.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "5372" for "5362" wherever appearing.

Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 30 sections 823, 956; title 50 App. sections 2168, 2407.

SUBCHAPTER III—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

§ 576. Appropriations

To carry out the purposes of this subchapter, there are authorized to be appropriated sums not to exceed $1,700,000 for the fiscal year ending September 30, 1979, $2,000,000 for the fiscal year ending September 30, 1980, $2,300,000 for the fiscal year ending September 30, 1981, and $2,300,000 for the fiscal year ending September 30, 1982.

(As amended Pub. L. 95-293, § 1(a), June 13, 1978, 92 Stat. 317.)

AMENDMENTS

1978—Pub. L. 95-293 substituted provisions authorizing appropriations for the fiscal years ending Sept. 30, 1979, Sept. 30, 1980, Sept. 30, 1981, and Sept. 30, 1982 of $1,700,000, $2,000,000, $2,300,000, and $2,300,000, respectively, for provisions authorizing appropriations for the fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, June 30, 1977, and June 30, 1978 of $760,000, $805,000, $850,000, $900,000, and $950,000, respectively, and provisions authorizing for each fiscal year thereafter such sums as may be necessary.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1(b) of Pub. L. 95-293 provided that: "The amendment made by subsection (a) [amending this section] shall take effect October 1, 1977."

CHAPTER 7—JUDICIAL REVIEW

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 559, 8902 of this title; title 2 sections 434, 501, 502; title 7 section 2049; title 12 sections 1464, 1730, 1730a, 1749bbb-17, 1786, 1815, 1818, 1959; title 15 sections 57a, 266, 687e, 1193, 1392, 1394, 1715, 1913, 2004, 2008, 2060, 2603, 2618, 2622, 3416; title 16 sections 460aa-3, 470q, 1374, 1536, 1855, 2404; title 17 sections 701, 803, 810; title 18 sections 843, 4218; title 20 sections 107d-2, 240, 641, 1683; title 21 sections 360e, 360g; title 22 sections 277d-24, 1037c, 1623; title 25 sections 372-1, 954; title 26 section 9041; title 29 sections 308f, 721, 792, 1137; title 31 section 1062; title 33 sections 524, 597; title 35 section 135; title 39 sections 404, 410, 3001, 3008, 3603; title 41 section 43a; title 42 sections 263f, 300j-9, 1395h, 1395oo, 2000d-2, 2022, 2231, 2236, 2239, 3886, 4104, 5405, 5851, 6105, 6303, 6306, 6976, 7525, 7622, 7920, 8220, 8412, 8433, 8441; title 44 section 2203; title 45 section 431; title 47 sections 303, 305, 310, 409; title 49 sections 1355, 1481, 1655, 1675, 1903; title 50 sections 795, 835; title 50 App. sections 463, 1221, 2159.

§ 701. Application; definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2149; title 18 sections 843, 4218; title 20 section 1683; title 25 section 954; title 30 section 956; title 42 sections 5405, 6105, 6976; title 50 App. sections 2168, 2406.

§ 702. Right of review

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2149; title 18 sections 843, 4218; title 19 section 160; title 25 section 954; title 42 section 5405; title 43 section 1817; title 50 App. sections 2168, 2406.

§ 703. Form and venue of proceeding

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2149; title 18 sections 843, 4218; title 25 section 954; title 42 section 5405; title 50 App. sections 2168, 2406.

§ 704. Actions reviewable

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2149; title 15 section 78ccc; title 18 sections 843, 4218; title 25 section 954; title 42 sections 5405, 7174, 7194; title 50 App. sections 2168, 2406.

§ 705. Relief pending review

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2149; title 15 sections 78y, 1262, 1474, 3416; title 16 section 1855; title 18 sections 843, 4218; title 25 section 954; title 42 sections 5405, 7172; title 50 App. sections 2168, 2406.

§ 706. Scope of review

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7123 of this title; title 2 sections 501, 502; title 7 sections 2048, 2149; title 11 App. section 1172; title 12 sections 93, 504, 505, 1464, 1730, 1730a, 1786, 1818, 1828, 1972; title 15 sections 57a, 78y, 757, 760a, 1262, 1474, 2618; title 16 sections 1030, 1855, 1858; title 18 sections 843, 4218; title 22 section 1037c; title 25 section 954; title 29 section 721; title 30 section 956; title 39 section 3628; title 42 sections 5405, 5919, 6976, 7607; title 45 section 726; title 47 section 402; title 50 App. sections 2168, 2406.

CHAPTER 9—EXECUTIVE REORGANIZATION

Sec.
901. Purpose.
902. Definitions.
903. Reorganization plans.
904. Additional contents of reorganization plan.
905. Limitations on powers.[1]
906. Effective date and publication of reorganization plans.
907. Effect on other laws, pending legal proceedings, and unexpended appropriations.
908. Rules of Senate and House of Representatives on reorganization plans.
909. Terms of resolution.
910. Introduction and reference of resolution.
911. Discharge of committee considering resolution.
912. Procedure after report or discharge of committee; debate; vote on final disapproval.

[1] So in original. Analysis does not conform to section catchline.

AMENDMENTS

1977—Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 29, reenacted chapter heading and items 901 to 903, 905 to 909, and 911 without change, substituted "plan" for "plans" in item 904 and "Introduction and reference of resolution" for "Reference of resolution to committee" in item 910, added "; vote on final disapproval" in item 912, and omitted item 913 "Decisions without debate on motion to postpone or proceed".

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 sections 2000e-6, 3534, 5741, 7176, 8401; title 49 section 1652.

§ 901. Purpose

(a) The Congress declares that it is the policy of the United States—

(1) to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;

(2) to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government;

(3) to increase the efficiency of the operations of the Government to the fullest extent practicable;

(4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

(5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and

(6) to eliminate overlapping and duplication of effort.

(b) Congress declares that the public interest demands the carrying out of the purposes of subsection (a) of this section and that the purposes may be accomplished in great measure by proceeding under this chapter, and can be accomplished more speedily thereby than by the enactment of specific legislation.

(c) It is the intent of Congress that the President should provide appropriate means for broad citizen advice and participation in restructuring and reorganizing the executive branch.

(d) The President shall from time to time examine the organization of all agencies and shall determine what changes in such organization are necessary to carry out any policy set forth in subsection (a) of this section.

(As amended Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 29.)

AMENDMENTS

1977—Subsecs. (a), (b). Pub. L. 95-17 reenacted subsecs. (a), (b) without change.

Subsec. (c). Pub. L. 95-17 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95-17 redesignated former subsec. (c) as (d).

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-17, § 1, Apr. 6, 1977, 91 Stat. 29, provided: "That this Act [which amended this chapter] may be cited as the 'Reorganization Act of 1977'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 903 of this title.

§ 902. Definitions

For the purpose of this chapter—

(1) "agency" means—

(A) an Executive agency or part thereof; and

(B) an office or officer in the executive branch;

but does not include the General Accounting Office or the Comptroller General of the United States;

(2) "reorganization" means a transfer, consolidation, coordination, authorization, or abolition, referred to in section 903 of this title; and

(3) "officer" is not limited by section 2104 of this title.

(As amended Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 30.)

AMENDMENTS

1977—Par. (1)(C). Pub. L. 95-17 struck out par. (1)(C) which defined "agency" as any and all parts of the government of the District of Columbia other than the courts thereof.

§ 903. Reorganization plans

(a) Whenever the President, after investigation, finds that changes in the organization of agencies are necessary to carry out any policy set forth in section 901(a) of this title, he shall prepare a reorganization plan specifying the reorganizations he finds are necessary. Any plan may provide for—

(1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;

(2) the abolition of all or a part of the functions of an agency, except that no enforcement function or statutory program shall be abolished by the plan;

(3) the consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;

(4) the consolidation or coordination of part of an agency or the functions thereof with another part of the same agency or the functions thereof;

(5) the authorization of an officer to delegate any of his functions; or

(6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions.

The President shall transmit the plan (bearing an identification number) to the Congress together with a declaration that, with respect to each reorganization included in the plan, he has found that the reorganization is necessary to carry out any policy set forth in section 901(a) of this title.

(b) The President shall have a reorganization plan delivered to both Houses on the same day and to each House while it is in session, except that no more than three plans may be pending before the Congress at one time. In his message transmitting a reorganization plan, the President shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function. The message shall also estimate any reduction or increase in expenditures (itemized so far as practicable), and describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan.

(c) Any time during the period of thirty calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution described in section 909 has been ordered reported in either House, the President may make amendments or modifications to the plan, consistent with sections 903-905 of this title, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this chapter. The President may withdraw the plan any time prior to the conclusion of sixty calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

(As amended Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 30.)

AMENDMENTS

1977—Subsec. (a)(2). Pub. L. 95-17 added provision that no enforcement function or statutory program shall be abolished by the plan.

Subsec. (b). Pub. L. 95-17 substituted provisions limiting to three the number of plans that may be pending before Congress at any one time for provisions limiting to one the number of plans that may be transmitted to Congress within any period of thirty consecutive days and provisions requiring that the President estimate any increase in expenditures and describe any improvements in management, delivery of Federal services, execution of laws, and increases in efficiency of Government operations expected as a result of the reorganizations included in the plan.

Subsec. (c). Pub. L. 95-17 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 902, 904, 909, 910 of this title.

§ 904. Additional contents of reorganization plan

A reorganization plan transmitted by the President under section 903 of this title—

(1) may change, in such cases as the President considers necessary, the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and one or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the President finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;

(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as the President considers necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

(5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan transmitted by the President containing provisions authorized by paragraph (2) of this section may provide that the head of an agency be an individual or a commission or board with more than one member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than four years, the pay may not be at a rate in excess of that found by the President to be applicable to comparable officers in the executive branch, and if the appointment is not to a position in the competitive service, it shall be by the President, by and with the advice and consent of the Senate. Any reorganization plan transmitted by the President containing provisions required by paragraph (4) of this section shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.

(As amended Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 31.)

AMENDMENTS

1977—Pub. L. 95–17 struck out in provisions following par. (5) exception that, in the case of an officer of the government of the District of Columbia, the appointment of the head of an agency may be by the Commissioner or other body of that government designated in the plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 903 of this title.

§ 905. Limitation on powers

(a) A reorganization plan may not provide for, and a reorganization under this chapter may not have the effect of—

(1) creating a new executive department, abolishing or transferring an executive department or independent regulatory agency, or all the functions thereof, or consolidating two or more executive departments or two or more independent regulatory agencies, or all the functions thereof;

(2) continuing an agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reorganization had not been made;

(3) continuing a function beyond the period authorized by law for its exercise or beyond the time when it would have terminated if the reorganization had not been made;

(4) authorizing an agency to exercise a function which is not expressly authorized by law at the time the plan is transmitted to Congress;

(5) increasing the term of an office beyond that provided by law for the office; or

(6) dealing with more than one logically consistent subject matter.

(b) A provision contained in a reorganization plan may take effect only if the plan is transmitted to Congress within three years of the date of enactment of the Reorganization Act of 1977.

(As amended Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 31.)

REFERENCES IN TEXT

The date of enactment of the Reorganization Act of 1977, referred to in subsec. (b), is Apr. 6, 1977, the date of enactment of Pub. L. 95–17, Apr. 6, 1977, 91 Stat. 29.

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95–17 substituted "an executive department or independent regulatory agency," for "an Executive department" and "or more executive departments or two or more independent regulatory agencies," for "or more Executive departments".

Subsec. (a)(6). Pub. L. 95–17 redesignated former subsec. (a)(7) as (a)(6). Former subsec. (a)(6), which related to the limitation on reorganization plans that have the effect of transferring to or consolidating with another agency the government of the District of Columbia or all the functions thereof which are subject to this chapter, or abolishing that government or all those functions, was struck out.

Subsec. (a)(7). Pub. L. 95–17 redesignated subsec. (a)(7) as (a)(6).

Subsec. (b). Pub. L. 95–17 substituted "within three years of the date of enactment of the Reorganization Act of 1977" for "before April 1, 1973".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 903 of this title.

§ 906. Effective date and publication of reorganization plans

(a) Except as otherwise provided under subsection (c) of this section, a reorganization plan is effective at the end of the first period of sixty calendar days of continuous session of Congress after the date on which the plan is transmitted to it unless, between the date of transmittal and the end of the sixty-day period, either House passes a resolution stating in substance that the House does not favor the reorganization plan.

(b) For the purpose of this chapter—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(c) Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective or, if both Houses of Congress have defeated a resolution of disapproval, may be effective at a time earlier than the expiration of the sixty-day period required by subsection (a).

(d) A reorganization plan which is effective shall be printed (1) in the Statutes at Large in the same volume as the public laws and (2) in the Federal Register.

(As amended Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 32.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-17 substituted "sixty" for "60" in two places.

Subsec. (b). Pub. L. 95-17 substituted in provisions preceding par. (1) "this chapter" for "subsection (a) of this section" and in par. (2) "any period of time in which Congress is in continuous session" for "the 60-day period".

Subsec. (c). Pub. L. 95-17 added provision that if both Houses of Congress have defeated a resolution of disapproval, the provision of a reorganization plan may be effective at a time earlier than the expiration of the sixty-day period required by subsec. (a).

Subsec. (d). Pub. L. 95-17 reenacted subsec. (d) without change.

§ 907. Effect on other laws, pending legal proceedings, and unexpended appropriations

(a) A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this chapter, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed by the plan.

(b) For the purpose of subsection (a) of this section, "regulation or other action" means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(c) A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, does not abate by reason of the taking effect of a reorganization plan under this chapter. On motion or supplemental petition filed at any time within twelve months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(d) The appropriations or portions of appropriations unexpended by reason of the operation of the chapter may not be used for any purpose, but shall revert to the Treasury.

(As amended Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 32.)

AMENDMENTS

1977—Subsecs. (a), (b). Pub. L. 95-17 reenacted subsecs. (a), (b) without change.

Subsec. (c). Pub. L. 95-17 substituted "twelve months" for "12 months".

Subsec. (d). Pub. L. 95-17 reenacted subsec. (d) without change.

§ 908. Rules of Senate and House of Representatives on reorganization plans

Sections 909 through 912 of this title are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by section 909 of this title; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(As amended Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 33.)

AMENDMENTS

1977—Pub. L. 95-17 substituted in provisions preceding par. (1) "Sections 909 through 912 of this title" for "Sections 909-913 of this title".

§ 909. Terms of resolution

For the purpose of sections 908 through 912 of this title, "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the does not favor the reorganization plan numbered transmitted to the Congress by the President on , 19 .", and includes such modifications and revisions as are submitted by the President under section 903(c) of this chapter. The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than one reorganization plan.

(As amended Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 33.)

REFERENCES IN TEXT

Section 903(c) of this chapter, referred to in text, means section 903(c) of this title.

AMENDMENTS

1977—Pub. L. 95-17 substituted "sections 908 through 912 of this title" for "sections 908-913 of this title" and provision that the blank spaces are to be appropriately filled for provision that the first blank space is to be filled with the name of the resolving House and the other blank spaces are to be appropriately filled and added provision that "resolution" includes such modifications and revisions as are submitted by the President under section 903(c) of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 903, 908, 910 of this title; title 22 section 2587.

§ 910. Introduction and reference of resolution

(a) No later than the first day of session following the day on which a reorganization plan

is transmitted to the House of Representatives and the Senate under section 903, a resolution, as defined in section 909, shall be introduced (by request) in the House by the chairman of the Government Operations Committee of the House, or by a Member or Members of the House designated by such chairman; and shall be introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(b) A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 45 calendar days of continuous session of Congress following the date of such resolution's introduction.

(As amended Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 33.)

AMENDMENTS

1977—Pub. L. 95–17 substituted in catchline "Introduction and reference of resolution" for "Reference of resolution to committee", designated existing provisions as subsec. (b), and as so designated, substituted "the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House" for "a committee" and added requirement that the Committee shall make its recommendation to the House or Senate within 45 calendar days of continuous session of Congress following the date of a resolution's introduction, and added subsec. (a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 908, 909, 911 of this title; title 22 section 2587.

§ 911. Discharge of committee considering resolution

If the committee to which is referred a resolution introduced pursuant to subsection (a) of section 910 (or, in the absence of such a resolution, the first resolution introduced with respect to the same reorganization plan) has not reported such resolution or identical resolution at the end of 45 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(As amended Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 34.)

AMENDMENTS

1977—Pub. L. 95–17 substituted provisions deeming the committee discharged from further consideration of a resolution where that committee has not reported the resolution within 45 days of continuous session of Congress after the resolution's introduction for provisions permitting a motion to discharge a committee where the committee considering a resolution has not reported the resolution within 20 calendar days after the resolution's introduction, provisions permitting a motion to discharge to be made only by an individual favoring the resolution and limiting debate to 1 hour, and provisions prohibiting a renewal of a motion to discharge where the original motion was agreed to or disagreed to or the making of another motion with respect to a resolution from the same reorganization plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 908, 909, 912 of this title; title 22 section 2587.

§ 912. Procedure after report or discharge of committee; debate; vote on final disapproval

(a) When the committee has reported, or has been deemed to be discharged (under section 911) from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(b) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order.

(c) Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final approval of the resolution shall occur.

(d) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

(As amended Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 34.)

AMENDMENTS

1977—Catchline. Pub. L. 95–17 inserted "; vote on final disapproval" following "debate".

Subsec. (a). Pub. L. 95–17 added provisions that a motion to discharge a committee is not subject to a motion to postpone or to a motion to proceed to the consideration of other business and that if a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

Subsec. (b). Pub. L. 95-17 added provisions that a motion to postpone or a motion to proceed to the consideration of other business is not in order.

Subsec. (c). Pub. L. 95-17 added subsec. (c).

Subsec. (d). Pub. L. 95-17 added subsec.(d) which provisions were formerly set out in section 913(b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 908, 909 of this title; title 22 section 2587; title 42 section 2941.

[§ 913. Omitted]

CODIFICATION

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 398, providing for decision without debate with respect to motions to postpone, motions to proceed to the consideration of other business, and appeals from decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, was omitted in the general amendment of this chapter by Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 29.

PART II—CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES

Chap.		Sec.
11.	Office of Personnel Management	1101
12.	Merit Systems Protection Board and Special Counsel	1201

AMENDMENTS

1978—Pub. L. 95-454, title II, § 201(c)(1), Oct. 13, 1978, 92 Stat. 1121, substituted "CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES" for "THE UNITED STATES CIVIL SERVICE COMMISSION" in heading for Part II.

Pub. L. 95-454, title II, § 201(c)(2), Oct. 13, 1978, 92 Stat. 1121, substituted "Office of Personnel Management" for "Organization" in heading of chapter 11.

Pub. L. 95-454, title II, § 202(d), Oct. 13, 1978, 92 Stat. 1131, added chapter 12.

CHAPTER 11—OFFICE OF PERSONNEL MANAGEMENT

Sec.
1101. Office of Personnel Management
1102. Director; Deputy Director; Associate Directors.
1103. Functions of the Director.
1104. Delegation of authority for personnel management.
1105. Administrative procedure.

AMENDMENTS

1978—Pub. L. 95-454, title II, § 201(a), Oct. 13, 1978, 92 Stat. 1119, substituted in chapter heading "Office of Personnel Management" for "Organization", in item 1101 "Office of Personnel Management" for "Appointment of Commissioners", in item 1102 "Director; Deputy Director; Associate Directors" for "Term of office; filling vacancies; removal", in item 1103 "Functions of the Director" for "Chairman; Vice Chairman; Executive Director", in item 1104 "Delegation of authority for personnel management" for "Functions of Chairman", and in item 1105 "Administrative procedure" for "Boards of examiners".

§ 1101. Office of Personnel Management

The Office of Personnel Management is an independent establishment in the executive branch. The Office shall have an official seal, which shall be judicially noticed, and shall have its principal office in the District of Columbia, and may have field offices in other appropriate locations.

(As amended Pub. L. 95-454, title II, § 201(a), Oct. 13, 1978, 92 Stat. 1119.)

AMENDMENTS

1978—Pub. L. 95-454 substituted in the section catchline "Office of Personnel Management" for "Appointment of Commissioners", and in text provisions relating to the establishment, etc., of the Office of Personnel Management for provisions relating to the appointment of members to the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 907 of Pub. L. 95-454 provided that: "Except as otherwise expressly provided in this Act, the provisions of this Act [see Tables for distribution] shall take effect 90 days after the date of the enactment of this Act [Oct. 13, 1978]."

SHORT TITLE

Section 1 of Pub. L. 95-454 provided that: "This Act [see Tables for distribution] may be cited as the 'Civil Service Reform Act of 1978'."

CIVIL SERVICE REFORM ACT OF 1978 FINDINGS AND STATEMENT OF PURPOSE

Section 3 of Pub. L. 95-454 provided that:

"It is the policy of the United States that—

"(1) in order to provide the people of the United States with a competent, honest, and productive Federal work force reflective of the Nation's diversity, and to improve the quality of public service, Federal personnel management should be implemented consistent with merit system principles and free from prohibited personnel practices;

"(2) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business, and prohibited personnel practices should be statutorily defined to enable Federal employees to avoid conduct which undermines the merit system principles and the integrity of the merit system;

"(3) Federal employees should receive appropriate protection through increasing the authority and powers of the Merit Systems Protection Board in processing hearings and appeals affecting Federal employees;

"(4) the authority and power of the Special Counsel should be increased so that the Special Counsel may investigate allegations involving prohibited personnel practices and reprisals against Federal employees for the lawful disclosure of certain information and may file complaints against agency officials and employees who engage in such conduct;

"(5) the function of filling positions and other personnel functions in the competitive service and in the executive branch should be delegated in appropriate cases to the agencies to expedite processing appointments and other personnel actions, with the control and oversight of this delegation being maintained by the Office of Personnel Management to protect against prohibited personnel practices and the use of unsound management practices by the agencies;

"(6) a Senior Executive Service should be established to provide the flexibility needed by agencies to recruit and retain the highly competent and qualified executives needed to provide more effective management of agencies and their functions, and the more expeditious administration of the public business;

"(7) in appropriate instances, pay increases should be based on quality of performance rather than length of service;

"(8) research programs and demonstration projects should be authorized to permit Federal agencies to

experiment, subject to congressional oversight, with new and different personnel management concepts in controlled situations to achieve more efficient management of the Government's human resources and greater productivity in the delivery of service to the public;

"(9) the training program of the Government should include retraining of employees for positions in other agencies to avoid separations during reductions in force and the loss to the Government of the knowledge and experience that these employees possess; and

"(10) the right of Federal employees to organize, bargain collectively, and participate through labor organizations in decisions which affect them, with full regard for the public interest and the effective conduct of public business, should be specifically recognized in statute."

SAVINGS PROVISIONS

Section 902 of Pub. L. 95–454 provided that:

"(a) Except as otherwise provided in this Act [see Tables for distribution], all executive orders, rules, and regulations affecting the Federal service shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the President, the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

"(b) No provision of this Act [see Tables for distribution] shall affect any administrative proceedings pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

"(c) No suit, action, or other proceeding lawfully commenced by or against the Director of the Office of Personnel Management or the members of the Merit Systems Protection Board, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act [see Effective Date of 1978 Amendment note above], shall abate by reason of the enactment of this Act [see Tables for distribution]. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted."

REORGANIZATION PLANS NO. 1 AND 2 OF 1978 SUPERSEDED BY CIVIL SERVICE REFORM ACT OF 1978

Section 905 of Pub. L. 95–454 provided that: "Any provision in either Reorganization Plan Numbered 1 [set out in the Appendix to this title] or 2 [set out below] of 1978 inconsistent with any provision in this Act [see Tables for distribution] is hereby superseded."

POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS PROVISIONS

Section 904 of Pub. L. 95–454 provided that:

"Except as otherwise expressly provided in this Act [see Tables for distribution], no provision of this Act shall be construed to—

"(1) limit, curtail, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this Act [see Effective Date of 1978 Amendment note above]; or

"(2) limit, curtail, or terminate the President's authority to delegate, redelegate, or terminate any delegation of functions."

REORGANIZATION PLAN NO. 2 OF 1978

43 F.R. 36037, 92 Stat. 3784

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 23, 1978,[1] pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

PART I. OFFICE OF PERSONNEL MANAGEMENT

SECTION 101. ESTABLISHMENT OF THE OFFICE OF PERSONNEL MANAGEMENT AND ITS DIRECTOR AND OTHER MATTERS

There is hereby established as an independent establishment in the Executive Branch, the Office of Personnel Management (the "Office"). The head of the Office shall be the Director of the Office of Personnel Management (the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level II of the Executive Schedule. The position referred to in 5 U.S.C. 5109(b) is hereby abolished.

SECTION 102. TRANSFER OF FUNCTIONS

Except as otherwise specified in this Plan, all functions vested by statute in the United States Civil Service Commission, or the Chairman of said Commission, or the Boards of Examiners established by 5 U.S.C. 1105 are hereby transferred to the Director of the Office of Personnel Management.

SECTION 103. DEPUTY DIRECTOR AND ASSOCIATE DIRECTORS

(a) There shall be within the Office a Deputy Director who shall be appointed by the President by and with the advice and consent of the Senate and who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

(b) There shall be within the Office not more than five Associate Directors, who shall be appointed by the Director in the excepted service, shall have such titles as the Director shall from time to time determine, and shall receive compensation at the rate now or hereafter provided for level IV of the Executive Schedule [5 U.S.C. 5315].

SECTION 104. FUNCTIONS OF THE DIRECTOR

The functions of the Director shall include, but not be limited to, the following:

(a) Aiding the President, as the President may request, in preparing such rules as the President prescribes, for the administration of civilian employment now within the jurisdiction of the United States Civil Service Commission;

(b) Advising the President, as the President may request, on any matters pertaining to civilian employment now within the jurisdiction of the United States Civil Service Commission;

(c) Executing, administering and enforcing the Civil Service rules and regulations of the President and the Office and the statutes governing the same, and other activities of the Office including retirement and classification activities except to the extent such functions remain vested in the Merit Systems Protection Board pursuant to Section 202 of this Plan, or are transferred to the Special Counsel pursuant to Section 204 of this Plan. The Director shall provide the public, where appropriate, a reasonable opportunity to comment and submit written views on the implementation and interpretation of such rules and regulations;

(d) Conducting or otherwise providing for studies and research for the purpose of assuring improvements in personnel management, and recommending to the President actions to promote an efficient Civil

[1] As amended July 11, 1978

Service and a systematic application of the merit system principles, including measures relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separations of employees; and

(e) Performing the training responsibilities now performed by the United States Civil Service Commission as set forth in 5 U.S.C. Chapter 41.

SECTION 105. AUTHORITY TO DELEGATE FUNCTIONS

The Director may delegate, from time to time, to the head of any agency employing persons in the competitive service, the performance of all or any part of those functions transferred under this Plan to the Director which relate to employees, or applicants for employment, of such agency.

PART II. MERIT SYSTEMS PROTECTION BOARD

SECTION 201. MERIT SYSTEMS PROTECTION BOARD

(a) The United States Civil Service Commission is hereby redesignated the Merit Systems Protection Board. The Commissioners of the United States Civil Service Commission are hereby redesignated as members of the Merit Systems Protection Board (the "Board").

(b) The Chairman of the Board shall be its chief executive and administrative officer. The position of Executive Director, established by 5 U.S.C. 1103(d), is hereby abolished.

SECTION 202. FUNCTIONS OF THE MERIT SYSTEMS PROTECTION BOARD AND RELATED MATTERS

(a) There shall remain with the Board the hearing, adjudication, and appeals functions of the United States Civil Service Commission specified in 5 U.S.C. 1104(b)(4) (except hearings, adjudications and appeals with respect to examination ratings), and also found in the following statutes:

(i) 5 U.S.C. 1504-1507, 7325, 5335, 7521, 7701 and 8347(d);

(ii) 38 U.S.C. 2023

(b) There shall remain with the Board the functions vested in the United States Civil Service Commission, or its Chairman, pursuant to 5 U.S.C. 1104(a)(5) and (b)(4) to enforce decisions rendered pursuant to the authorities described in Subsection (a) of this Section.

(c) Any member of the Board may request from the Director, in connection with a matter then pending before the Board for adjudication, an advisory opinion concerning interpretation of rules, regulations, or other policy directives promulgated by the Office of Personnel Management.

(d) Whenever the interpretation or application of a rule, regulation, or policy directive of the Office of Personnel Management is at issue in any hearing, adjudication, or appeal before the Board, the Board shall promptly notify the Director, and the Director shall have the right to intervene in such proceedings.

(e) The Board shall designate individuals to chair performance rating boards established pursuant to 5 U.S.C. 4305.

(f) The Chairman of the Board shall designate representatives to chair boards of review established pursuant to 5 U.S.C. 3383(b).

(g) The Board may from time to time conduct special studies relating to the Civil Service, and to other merit systems in the Executive Branch and report to the President and the Congress whether the public interest in a workforce free of personnel practices prohibited by law or regulations is being adequately protected. In carrying out this function the Board shall make such inquiries as may be necessary, and, to the extent permitted by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed. The Board shall make such recommendations to the President and the Congress as it deems appropriate.

(h) The Board may delegate the performance of any of its administrative functions to any officer or employee of the Board.

(i) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. The Board may issue rules and regulations, consistent with statutory requirements, defining its review procedures, including the time limits within which an appeal must be filed and the rights and responsibilities of the parties to an appeal. All regulations of the Board shall be published in the FEDERAL REGISTER.

SECTIÓN 203. SAVINGS PROVISION

The Board shall accept appeals from agency actions effected prior to the effective date of this Plan. On the effective date of Part II of this Plan, proceedings then before the Federal Employee Appeals Authority shall continue before the Board; proceedings then before the Appeals Review Board and proceedings then before the United States Civil Service Commission on appeal from decisions of the Appeals Review Board shall continue before the Board; other employee appeals before boards or other bodies pursuant to law or regulation shall continue to be processed pursuant to those laws or regulations. Nothing in this section shall affect the right of a Federal employee to judicial review under applicable law.

SECTION 204. THE SPECIAL COUNSEL

(a) There shall be a Special Counsel to the Board appointed for a term of four years by the President by and with the advice and consent of the Senate, who shall be compensated as now or hereafter provided for level IV of the Executive Schedule.

(b) There are hereby transferred to the Special Counsel all functions with respect to investigations relating to violations of 5 U.S.C. Chapter 15; 5 U.S.C. Subchapter III of Chapter 73 (Political Activities); and 5 U.S.C. 552(a)(4)(F) (public information).

(c) The Special Counsel may investigate, pursuant to 5 U.S.C. 1303, allegations of personnel practices which are prohibited by law or regulation.

(d) When in the judgment of the Special Counsel, such personnel practices exist, he shall report his findings and recommendations to the Chairman of the Merit Systems Protection Board, the agency affected, and to the Office of Personnel Management, and may report such findings to the President.

(e) When in the judgment of the Special Counsel, the results of an investigation would warrant the taking of disciplinary action against an employee who is within the jurisdiction of the Board, the Special Counsel shall prepare charges against such employee and present them with supporting documentation to the Board. Evidence supporting the need for disciplinary action against a Presidential appointee shall be submitted by the Special Counsel to the President.

(f) The Special Counsel may appoint personnel necessary to assist in the performance of his functions.

(g) The Special Counsel shall have the authority to prescribe rules and regulations relating to the receipt and investigation of matters under his jurisdiction. Such regulations shall be published in the FEDERAL REGISTER.

(h) The Special Counsel shall not issue advisory opinions.

PART III. FEDERAL LABOR RELATIONS AUTHORITY

SECTION 301. ESTABLISHMENT OF THE FEDERAL LABOR RELATIONS AUTHORITY

(a) There is hereby established, as an independent establishment in the Executive Branch, the Federal Labor Relations Authority (the "Authority"). The Authority shall be composed of three members, one of whom shall be Chairman, not more than two of whom

may be adherents of the same political party, and none of whom may hold another office or position in the Government of the United States except where provided by law or by the President.

(b) Members of the Authority shall be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member to serve as Chairman of the Authority, who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule [5 U.S.C. 5314]. The other members shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule [5 U.S.C. 5315].

(c) The initial members of the Authority shall be appointed as follows: one member for a term of two years; one member for a term of three years; and the Chairman for a term of four years. Thereafter, each member shall be appointed for a term of four years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) The Authority shall make an annual report on its activities to the President for transmittal to Congress.

SECTION 302. ESTABLISHMENT OF THE GENERAL COUNSEL OF THE AUTHORITY

There shall be a General Counsel of the Authority, who shall be appointed by the President, by and with the advice and consent of the Senate for a term of four years, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule. The General Counsel shall perform such duties as the Authority shall from time to time prescribe, including but not limited to the duty of determining and presenting facts required by the Authority in order to decide unfair labor practice complaints.

SECTION 303. THE FEDERAL SERVICE IMPASSES PANEL

The Federal Service Impasses Panel, established under Executive Order 11491, as amended [set out as a note under Section 7101 of this title], (the "Panel") shall continue, and shall be a distinct organizational entity within the Authority.

SECTION 304. FUNCTIONS

Subject to the provisions of Section 306, the following functions are hereby transferred:

(a) To the Authority—

(1) The functions of the Federal Labor Relations Council pursuant to Executive Order 11491, as amended [set out as a note under section 7101 of this title];

(2) The functions of the Civil Service Commission under Sections 4(a) and 6(e) of Executive Order 11491, as amended;

(3) The functions of the Assistant Secretary of Labor for Labor-Management Relations, under Executive Order 11491, as amended, except for those functions related to alleged violations of the standards of conduct for labor organizations pursuant to Section 6(a)(4) of said Executive Order; and,

(b) to the Panel—the functions and authorities of the Federal Service Impasses Panel, pursuant to Executive Order 11491, as amended.

SECTION 305. AUTHORITY DECISIONS

The decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review.

SECTION 306. OTHER PROVISIONS

Unless and until modified, revised, or revoked, all policies, regulations, and procedures established, and decisions issued, under Executive Order 11491, as amended [set out as a note under section 7101 of this title], shall remain in full force and effect. There is hereby expressly reserved to the President the power to modify the functions transferred to the Federal Labor Relations Authority and the Federal Service Impasses Panel pursuant to Section 304 of this Plan.

SECTION 307. SAVINGS PROVISION

All matters which relate to the functions transferred by Section 304 of this Plan, and which are pending on the effective date of the establishment of the Authority before the Federal Labor Relations Council, the Vice Chairman of the Civil Service Commission, or the Assistant Secretary of Labor for Labor-Management Relations shall continue before the Authority under such rules and procedures as the Authority shall prescribe. All such matters pending on the effective date of the establishment of the Authority before the Panel, shall continue before the Panel under such rules and procedures as the Panel shall prescribe.

PART IV. GENERAL PROVISIONS

SECTION 401. INCIDENTAL TRANSFER

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SECTION 402. INTERIM OFFICERS

(a) The President may authorize any persons who, immediately prior to the effective date of this Plan, held positions in the Executive Branch of the Government, to act as Director of the Office of Personnel Management, the Deputy Director of the Office of Personnel Management, the Special Counsel, the Chairman and other members of the Federal Labor Relations Authority, the Chairman and other members of the Federal Service Impasses Panel, or the General Counsel of the Authority, until those offices are for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment, as the case may be.

(b) The President may authorize any such person to receive the compensation attached to the Office in respect of which that person so serves, in lieu of other compensation from the United States.

SECTION 403. EFFECTIVE DATE

The provisions of this Reorganization Plan shall become effective at such time or times, on or before January 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

On March 2nd I sent to Congress a Civil Service Reform proposal to enable the Federal government to improve its service to the American people.

Today I am submitting another part of my comprehensive proposal to reform the Federal personnel management system through Reorganization Plan No. 2 of 1978. The plan will reorganize the Civil Service Commission and thereby create new institutions to increase the effectiveness of management and strengthen the protection of employee rights.

The Civil Service Commission has acquired inherently conflicting responsibilities: to help manage the Federal Government and to protect the rights of Federal employees. It has done neither job well. The Plan would separate the two functions.

OFFICE OF PERSONNEL MANAGEMENT

The positive personnel management tasks of the government—such as training, productivity programs, examinations, and pay and benefits administration—would be the responsibility of an Office of Personnel Management. Its Director, appointed by the President and confirmed by the Senate, would be responsible for administering Federal personnel matters except for Presidential appointments. The Director would be the government's principal representative in Federal labor relations matters.

MERIT SYSTEMS PROTECTION BOARD

The adjudication and prosecution responsibilities of the Civil Service Commission will be performed by the Merit Systems Protection Board. The Board will be headed by a bipartisan panel of three members appointed to six-year, staggered terms. This Board would be the first independent and institutionally impartial Federal agency solely for the protection of Federal employees.

The Plan will create, within the Board, a Special Counsel to investigate and prosecute political abuses and merit system violations. Under the civil service reform legislation now being considered by the Congress, the Counsel would have power to investigate and prevent reprisals against employees who report illegal acts—the so-called "whistleblowers." The Council would be appointed by the President and confirmed by the Senate.

FEDERAL LABOR RELATIONS AUTHORITY

An Executive Order now vests existing labor-management relations in a part-time Federal Labor-Relations Council, comprised of three top government managers; other important functions are assigned to the Assistant Secretary of Labor for Labor-Management Relations. This arrangement is defective because the Council members are part-time, they come exclusively from the ranks of management and their jurisdiction is fragmented.

The Plan I submit today would consolidate the central policymaking functions in labor-management relations now divided between the Council and the Assistant Secretary into one Federal Labor Relations Authority. The Authority would be composed of three full-time members appointed by the President with the advice and consent of the Senate. Its General Counsel, also appointed by the President and confirmed by the Senate, would present unfair labor practice complaints. The Plan also provides for the continuance of the Federal Service Impasses Panel within the Authority to resolve negotiating impasses between Federal employee unions and agencies.

The cost of replacing the Civil Service Commission can be paid by our present resources. The reorganization itself would neither increase nor decrease the costs of personnel management throughout the government. But taken together with the substantive reforms I have proposed, this Plan will greatly improve the government's ability to manage programs, speed the delivery of Federal services to the public, and aid in executing other reorganizations I will propose to the Congress, by improving Federal personnel management.

Each of the provisions of this proposed reorganization would accomplish one or more of the purposes set forth in 5 U.S.C. 901(a). No functions are abolished by the Plan, but the offices referred to in 5 U.S.C. 5109(b) and 5 U.S.C. 1103(d) are abolished. The portions of the Plan providing for the appointment and pay for the head and one or more officers of the Office of Personnel Management, the Merit Systems Protection Board, the Federal Labor Relations Authority and the Federal Service Impasses Panel, are necessary to carry out the reorganization. The rates of compensation are comparable to those for similar positions within the Executive Branch.

I am confident that this Plan and the companion civil service reform legislation will both lead to more effective protection of Federal employees' legitimate rights and a more rewarding workplace. At the same time the American people will benefit from a better managed, more productive and more efficient Federal Government.

JIMMY CARTER.

THE WHITE HOUSE, May 23, 1978.

EX. ORD. NO. 12107. IMPLEMENTATION OF REFORM OF PERSONNEL MANAGEMENT SYSTEM

Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 105, provided:

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, and by Section 403 of Reorganization Plan No. 2 of 1978 (43 FR 36037) [set out as a note above], it is hereby ordered as follows:

SECTION 1

IMPLEMENTATION OF REORGANIZATION PLAN NO. 2 OF 1978

1-1. OFFICE OF PERSONNEL MANAGEMENT

1-101. *Establishment of Office of Personnel Management.* The establishment of the Office of Personnel Management and of the positions of Director, Deputy Director, and Associate Directors of that Office, as provided in Sections 101 and 103 of Reorganization Plan No. 2 of 1978, shall be effective on January 1, 1979.

1-102. *Transfer of Functions.* Section 102 of Reorganization Plan No. 2 of 1978, transferring functions to the Director of the Office of Personnel Management, shall be effective on January 1, 1979.

1-2. MERIT SYSTEMS PROTECTION BOARD

1-201. *Redesignation of Civil Service Commission.* The redesignation of the Civil Service Commission as the Merit Systems Protection Board and of the Commissioners as Members of the Board as provided in Section 201 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1-202. *Functions of the Merit Systems Protection Board.* The functions of the Merit Systems Protection Board as provided in Section 202 and the savings provisions of Section 203 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1-3. THE SPECIAL COUNSEL

1-301. *Establishment of the Office of Special Counsel.* The establishment of the Office of Special Counsel to the Merit Systems Protection Board as provided in Section 204(a) of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1-302. *Functions of the Special Counsel.* The transfer of functions provided for in Section 204(b) and the performance of functions set forth in Section 204(c)-(g) of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1-4. THE FEDERAL LABOR RELATIONS AUTHORITY

1-401. *The Establishment of the Federal Labor Relations Authority and the Office of General Counsel.* The establishment of the Federal Labor Relations Authority as provided in Section 301 and of the Office of General Counsel of the Authority as provided in Section 302 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1-402. *The Federal Service Impasses Panel.* The continuation of the Federal Service Impasses Panel established under Executive Order No. 11491, as amended, as a distinct organizational entity within the Federal Labor Relations Authority as provided in Section 303 of Reorganization Plan No. 2 of 1978, shall be effective on January 1, 1979.

1-403. *Functions of the Federal Labor Relations Authority, the General Counsel, and the Federal Service*

Impasses Panel. The transfer of functions provided for in Section 304 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1-5. GENERAL

1-501. *General Effective Date.* All other provisions of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

SECTION 2

REDESIGNATIONS, AMENDMENTS TO RULES AND EXECUTIVE ORDERS AND GENERAL PROVISIONS

2-1. REDESIGNATIONS

2-101. *Office of Personnel Management.* Each of the Executive orders, as amended, listed in this Section under subsections (a) and (b), as applicable, and any other order which relates to functions or areas of responsibility delegated to the Office of Personnel Management, is amended and revised by substituting the words "Office of Personnel Management" for the words "Civil Service Commission" or "United States Civil Service Commission"; by substituting the word "Office" for the word "Commission" wherever the word "Commission" is used as a reference to United States Civil Service Commission; and by substituting the words "Director, Office of Personnel Management" for the words "Chairman, Civil Service Commission", "Chairman, United States Civil Service Commission", "Commissioners" or "Commissioner" wherever they appear.

(a) Executive orders relating to the Civil Service Rules, ethics and other matters of Presidential interest.

Executive Orders Numbered

8743
10577, as amended, except for Rules IV and V, as amended in this order,
10641
10717
10927
11183
11222
11315
11451
11570
11639
11648
11721
11935
12004
12014
12043

(b) Other Executive orders relating to Federal Personnel Management, and membership on Councils, Boards, and Committees.

Executive Orders Numbered

8744
9230
9712
9830
9932
9961
10000
10242
10422
10450
10459
10530
10549
10550
10552
10556
10647
10763
10774, except for Section 3(e)
10804
10826
10880
10903
10973
10982
11103
11171
11203
11219
11228
11264
11348
11355
11422
11434
11438
11490
11512
11521
11552
11561
11579
11589
11603
11609
11636
11639
11744
11817
11890
11895
11899
11938
11955
12008
12015
12027
12049
12067
12070
12089
12105

2-102, *Merit Systems Protection Board.* The provisions of Section 3(e) of Executive Order No. 10774 [set out as a note under section 2025 of Title 22, Foreign Relations and Intercourse], and Executive Order No. 11787 [set out as a note under section 7701 of this title], are hereby amended and revised by substituting the words "Merit Systems Protection Board" for the words "Civil Service Commission" or "Commission" when used as a reference to the Civil Service Commission wherever such words appear.

2-103. *Amending the Civil Service Rules.* Section 101 of Executive Order No. 10577, as amended [set out as a note under section 3301 of this title], is further amended by substituting for Rule II—Appointment Through the Competitive System, a new Sec. 2.4 as follows:

"Sec. 2.4. *Probationary period.* Persons selected from registers of eligibles for career or career-conditional appointment and employees promoted, transferred, or otherwise assigned, for the first time, to supervisory or managerial positions shall be required to serve a probationary period under terms and conditions prescribed by the Office.";

by deleting the last sentence under Rule IV—Prohibited Practices, Sec. 4.3; and

by substituting for Rule V—Regulations, Investigations, and Enforcement, a new Rule V as follows:

"RULE V—REGULATIONS, INVESTIGATIONS, EVALUATION, AND ENFORCEMENT"

"Sec. 5.1. *Civil Service Regulations.* The Director, Office of Personnel Management, shall promulgate and enforce regulations necessary to carry out the provisions of the Civil Service Act and the Veterans' Preference Act, as reenacted in Title 5, United States Code, the Civil Service Rules, and all other statutes and Executive orders imposing responsibilities on the Office. The Director is authorized, whenever there are practical difficulties and unnecessary hardships in complying with the strict letter of the regulation, to grant a variation from the strict letter of the regulation if such a variation is within the spirit of the regulations, and the efficiency of the Government and the integrity of the competitive service are protected and promoted. Whenever a variation is granted the Director shall note the official record to show: (1) the particular practical difficulty or hardship involved, (2) what is permitted in place of what is required by regulation, (3) the circumstances which protect or promote the efficiency of the Government and the integrity of the competitive service, and (4) a statement limiting the application of the variation to the continuation of the conditions which gave rise to it. Like variations shall be granted whenever like conditions exist. All such decisions and information concerning variations noted in the official record shall be published promptly in a Federal Personnel Manual, Letter or Bulletin and in the Director's next annual report.

"Sec. 5.2. *Investigation and Evaluations.* The Director may secure effective implementation of the civil service laws, rules, and regulations, and all Executive orders imposing responsibilities on the Office by:

(a) Investigating the qualifications and suitability of applicants for positions in the competitive service. The Director may require appointments to be made subject to investigation to enable the Director to determine, after appointment, that the requirements of law or the civil service rules and regulations have been met.

(b) Evaluating the effectiveness of: (1) personnel policies, programs, and operations of Executive and other Federal agencies subject to the jurisdiction of the Office, including their effectiveness with regard to merit selection and employee development; (2) agency compliance with and enforcement of applicable laws, rules, regulations and office directives; and (3) agency personnel management evaluation systems.

(c) Investigating, or directing an agency to investigate and report on, apparent violations of applicable laws, rules, regulations, or directives requiring corrective action, found in the course of an evaluation.

(d) Requiring agencies to report, in a manner and at times as the Director may prescribe, personnel information the Director requests relating to civilian employees in the Executive branch of the Government, as defined by Section 311 of the Civil Service Reform Act of 1978 [set out as a note under section 3101 of this title], including positions and officers and employees in the competitive, excepted and Senior Executive services, whether permanent, career-conditional, temporary or emergency.

"Sec. 5.3. *Enforcement.*

(a) The Director is authorized to ensure enforcement of the civil service laws, rules, and regulations, and all applicable Executive orders, by:

(1) Instructing an agency to separate or take other action against an employee serving an appointment subject to investigation when the Director finds that the employee is disqualified for Federal employment. Where the employee or the agency appeals the Director's finding that a separation or other action is necessary, the Director may instruct the agency as to whether or not the employee should remain on duty and continue to receive pay pending adjudication of the appeal: *Provided,* That when an agency separates or takes other action against an employee pursuant to the Director's instructions, and the Director, on the basis of new evidence, subsequently reverses the initial decision as to the employee's qualifications and suitability, the agency shall, upon request of the Director, restore the employee to duty or otherwise reverse any action taken.

(2) Reporting the results of evaluation or investigations to the head of the agency concerned with instructions for any corrective action necessary, including cancellation of personnel actions where appropriate. The Director's findings resulting from evaluations or investigations are binding unless changed as a result of agency evidence and arguments against them. If, during the course of any evaluation or investigation under this Section, the Director finds evidence of matters which come within the investigative and prosecutional jurisdiction of the Special Counsel of the Merit Systems Protection Board, the Director shall refer this evidence to the Special Counsel for appropriate disposition.

(b) Whenever the Director issues specific instructions as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the head of the agency concerned shall comply with the Director's instructions.

(c) If the agency head fails to comply with the specific instructions of the Director as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the Director may certify to the Comptroller General of the United States the agency's failure to act together with such additional information as the Comptroller General may require, and shall furnish a copy of such certification to the head of the agency concerned. The individual with respect to whom such separation or other corrective action was instructed shall be entitled thereafter to no pay or only to such pay as appropriate to effectuate the Director's instructions.

"Sec. 5.4 *Information and Testimony.* When required by the Office, the Merit Systems Protection Board, or the Special Counsel of the Merit Systems Protection Board, or by authorized representatives of these bodies, agencies shall make available to them, or to their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws, rules, and regulations, and records pertinent to these matters. All such employees, and all applicants or eligibles for positions covered by these rules, shall give to the Office, the Merit Systems Protection Board, the Special Counsel, or to their authorized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section.".

2-104. *Effectiveness of Rule Changes.* The amendments to rules shall be effective on January 1, 1979, to the extent provided by law on that date.

2-2. Revocation of Executive Orders and Delegation of Functions

2-201. *Revocation of Executive Orders and Delegation of Functions to the Director.* Executive Orders numbered 10540 and 10561 are revoked and the authority vested in the President by Section 202(c)(1)(C) of the Annual Sick Leave Act of 1951, as amended [section 6301(2)(XI) of this title], and the authority of the President, pursuant to the Civil Service Act of January 16, 1883, to designate official personnel folders in government agencies as records of the Office of Personnel Management and to prescribe regulations relating to the establishment, maintenance and transfers of official personnel folders, are delegated to the Director of the Office of Personnel Management. Any rules, regulations, directives, instructions or other actions taken pursuant to the authority delegated to the Director of the Office of Personnel Management shall remain in effect until amended, modified, or revoked pursuant to the delegations made by this Order.

2-202. *Savings Provision.* All personnel actions and decisions affecting employees or applicants for employment made on or before January 11, 1979 shall continue to be governed by the applicable Executive order, and the rules and regulations implementing that Order, to the same extent as if that Executive order had not been revoked effective January 11, 1979 unless amended, modified or revoked pursuant to this Order.

2-3. Labor Management Relations in the Federal Service

2-301. *Labor Management Relations.* Executive Order No. 11491 of October 29, 1969, as amended by Executive Orders numbered 11616, 11636, 11838, 11901, and 12027, relating to labor-management relations in the Federal service, is further amended as follows:

1. Subsections (g), (h) and (i) of Section 2 are amended and a new subsection (j) is added to read as follows:

"(g) 'Authority' means the Federal Labor Relations Authority;

"(h) 'Panel' means the Federal Service Impasses Panel;

"(i) 'Assistant Secretary' means the Assistant Secretary of Labor for Labor Management Relations; and

"(j) 'General Counsel' means the General Counsel of the Authority.".

2. Section 3(b) is amended—

(a) by substituting for paragraph (6) the following:

"(6) The Tennessee Valley Authority; or"; and

(b) by adding the following:

"(7) Personnel of the Federal Labor Relations Authority (including the Office of the General Counsel and the Federal Service Impasses Panel).".

3. Section (d) is amended to read as follows:

"(d) Employees engaged in administering a labor-management relations law or this Order who are otherwise authorized by this Order to be represented by a labor organization shall not be represented by a labor organization which also represents other groups of employees under the law or this Order, or which is affiliated directly or indirectly with an organization which represents such a group of employees.".

4. Section 4 is amended to read as follows:

"Sec. 4 *Powers and Duties of the Federal Labor Relations Authority.*

"(a) [Revoked].

"(b) The Authority shall administer and interpret this Order, decide major policy issues, and prescribe regulations.

"(c) The Authority shall, subject to its regulations:

(1) decide questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for its considerations;

(2) supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certify the results;

(3) decide questions as to the eligibility of labor organizations for national consultation rights;

(4) decide unfair labor practice complaints; and

(5) decide questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement as provided in Section 13(d) of this Order.

"(d) The Authority may consider, subject to its regulations:

(1) appeals on negotiability issues as provided in Section 11(c) of this Order:

(2) exceptions to arbitration awards;

(3) appeals from decisions of the Assistant Secretary of Labor for Labor-Management Relations issued pursuant to Section 6(b) this Order; and

(4) other matters it deems appropriate to assure the effectuation of the purposes of this Order.

"(e) In any matters arising under subsection (c) and (d)(3) of this Section, the Authority may require an agency or a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as the Authority considers appropriate to effectuate the policies of this Order.

"(f) In performing the duties imposed on it by this Section, the Authority may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686).".

5. The caption of Section 5 is amended to read as follows:

"Sec. 5. *Powers and Duties of the Federal Service Impasses Panel.*"

6. Section 5(a) is amended:

(a) by substituting the words "a distinct organizational entity within the Authority" for the words "an agency within the Council" in the first sentence; and

(b) by substituting the word "Authority" for the word "Council" in the third sentence.

7. Section 6 is amended to read as follows:

"Sec. 6. *Powers and Duties of the Office of the General Counsel and the Assistant Secretary of Labor for Labor-Management Relations.*

"(a) The General Counsel is authorized, upon direction by the Authority, to:

(1) investigate complaints of violations of Section 19 of this Order;

(2) make final decisions as to whether to issue unfair labor practice complaints and prosecute such complaints before the Authority;

(3) direct and supervise all employees in the Office of General Counsel, including employees of the General Counsel in the regional office of the Authority;

(4) perform such other duties as the Authority may prescribe; and

(5) prescribe regulations needed to administer his functions under this Order.

"(b) The Assistant Secretary shall:

(1) decide alleged violations of the standards of conduct for labor organizations, established in Section 18 of this Order; and

(2) prescribe regulations needed to administer his functions under this Order.

"(c) In any matter arising under paragraph (b) of this Section, the Assistant Secretary may require a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order.

"(d) In performing the duties imposed on them by this Section, the General Counsel and the Assistant Secretary may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686).".

8. Section 9 is amended:

(a) by substituting the word "Authority" for the word "Council" in the first sentence of subsection (a); and

(b) by substituting the word "Authority" for the words "Assistant Secretary" in subsection (c).

9. Section 10 is amended:

(a) by substituting the word "Authority" for the words "Assistant Secretary" in the last sentence of subsection (b); and

(b) by substituting the word "Authority" for the words "Assistant Secretary" and the word "it" for the word "him", in the first sentence of subsection (d).

10. Section 11 is amended:

(a) by substituting the word "Authority" for the word "Council" in the first sentence of subsection (a); and

(b) by substituting the word "Authority" for the word "Council" in paragraph (4) of subsection (c).

11. Section 11(d) is revoked.

12. Section 13 is amended:

(a) by substituting the word "Authority" for the word "Council" in the third sentence of subsection (b); and

(b) by substituting the word "Authority" for the words "Assistant Secretary" in the first and second sentence of subsection (d).

13. Section 19(d) is amended by substituting the word "Authority" for the words "Assistant Secretary" in the last sentence.

14. Section 21(a) is amended by substituting the words "Office of Personnel Management" for the words "Civil Service Commission" in the second sentence.

15. Section 22 is amended:

(a) by substituting the words "Office of Personnel Management" for the words "Civil Service Commission" in the first sentence and

(b) by substituting the words "Merit Systems Protection Board" for the words "Civil Service Commission" in the second and third sentences.

16. Section 25(a) is amended:

(a) by substituting the words "Office of Personnel Management" for the words "Civil Service Commission" in the first, second and third sentences; and

(b) by substituting the word "Authority" for the word "Council" in the third sentence.

17. Section 25(b) is amended by substituting the words "Office of Personnel Management" for the words "Department of Labor and Civil Service Commission.".

2-4. General Provisions

2-401. *Study and Report Provisions.* The Director of the Office of Personnel Management is directed to conduct a study of Executive orders listed in Section 2-101(a) and (b) and to coordinate the study with such other agencies as may be named in or affected by these orders. The Director of Personnel Management and the Director of the Office of Management and Budget are directed to submit a report on or before July 1, 1981 to the President concerning the performance of functions specified in these Executive orders and any other Executive orders affecting the functions or responsibilities of the Office of Personnel Management. The report shall contain specific detailed recommendations for the continuation, modification, revision or revocation of each Executive order.

2-402. *Continuing Effect of this Order.* Except as required by the Civil Service Reform Act of 1978 [Pub. L. 95-454] as its provisions become effective, in accord with Section 7135 of Title 5, United States Code, as amended, and in accord with Section 902(a) of that Act [set out as a Savings Provisions note above], the provisions of this Order shall continue in effect, according to its terms, until modified, terminated or suspended.

2-403. *Transfers and Determinations.*

(a) The records, property, personnel and positions, and unexpended balances of appropriations or funds related to Civil Service Commission functions reassigned by this Order that are available, or to be made available, and necessary to finance or discharge the reassigned functions are transferred to the Director of the Office of Personnel Management, the Federal Labor Relations Authority, or the Federal Service Impasses Panel, as appropriate.

(b) The Director of the Office of Management and Budget shall make such determinations, issue such Orders and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property and personnel.

2-404. *Effective Date.* Except as otherwise specifically provided in this Order, this Order shall be effective on January 1, 1979.

Jimmy Carter.

§ 1102. Director; Deputy Director; Associate Directors

(a) There is at the head of the Office of Personnel Management a Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as Director shall be 4 years.

(b) There is in the Office a Deputy Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or when the office of Director is vacant.

(c) No individual shall, while serving as Director or Deputy Director, serve in any other office or position in the Government of the United States except as otherwise provided by law or at the direction of the President. The Director and Deputy Director shall not recommend any individual for appointment to any position (other than Deputy Director of the Office) which requires the advice and consent of the Senate.

(d) There may be within the Office of Personnel Management not more than 5 Associate Directors, as determined from time to time by the Director. Each Associate Director shall be appointed by the Director.

(As amended Pub. L. 95-454, title II, § 201(a), Oct. 13, 1978, 92 Stat. 1119.)

Amendments

1978—Pub. L. 95-454 substituted in catchline "Director; Deputy Director; Associate Directors" for "Term of office; filling vacancies; removal", and in text provisions relating to the Director, Deputy Director, and Associate Directors of the Office of Personnel Management for provisions relating to the term of office, vacancies, and removal of members of the United States Civil Service Commission.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 1103. Functions of the Director

(a) The following functions are vested in the Director of the Office of Personnel Management, and shall be performed by the Director, or subject to section 1104 of this title, by such employees of the Office as the Director designates:

(1) securing accuracy, uniformity, and justice in the functions of the Office;

(2) appointing individuals to be employed by the Office;

(3) directing and supervising employees of the Office, distributing business among employees and organizational units of the Office, and directing the internal management of the Office;

(4) directing the preparation of requests for appropriations for the Office and the use and expenditure of funds by the Office;

(5) executing, administering, and enforcing—

(A) the civil service rules and regulations of the President and the Office and the laws governing the civil service; and

(B) the other activities of the Office including retirement and classification activities;

except with respect to functions for which the Merit Systems Protection Board or the Special Counsel is primarily responsible;

(6) reviewing the operations under chapter 87 of this title;

(7) aiding the President, as the President may request, in preparing such civil service rules as the President prescribes, and otherwise advising the President on actions which may be taken to promote an efficient civil service and a systematic application of the merit system principles, including recommending policies relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separation of employees; and

(8) conducting, or otherwise providing for the conduct of, studies and research under chapter 47 of this title into methods of assuring improvements in personnel management.

(b)(1) The Director shall publish in the Federal Register general notice of any rule or regulation which is proposed by the Office and the application of which does not apply solely to the Office or its employees. Any such notice shall include the matter required under section 553(b) (1), (2), and (3) of this title.

(2) The Director shall take steps to ensure that—

(A) any proposed rule or regulation to which paragraph (1) of this subsection applies is posted in offices of Federal agencies maintaining copies of the Federal personnel regulations; and

(B) to the extent the Director determines appropriate and practical, exclusive representatives of employees affected by such proposed rule or regulation and interested members of the public are notified of such proposed rule or regulation.

(3) Paragraphs (1) and (2) of this subsection shall not apply to any proposed rule or regulation which is temporary in nature and which is necessary to be implemented expeditiously as a result of an emergency.

(As amended Pub. L. 95–454, title II, § 201(a), Oct. 13, 1978, 92 Stat. 1119.)

AMENDMENTS

1978—Pub. L. 95–454 substituted in catchline "Functions of the Director" for "Chairman; Vice Chairman; Executive Director", and in text provisions relating to the functions of the Director of the Office of Personnel Management for provisions relating to the Chairman, Vice Chairman, and Executive Director of the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1105, 1205, 3133 of this title.

§ 1104. Delegation of authority for personnel management

(a) Subject to subsection (b)(3) of this section—

(1) the President may delegate, in whole or in part, authority for personnel management functions, including authority for competitive examinations, to the Director of the Office of Personnel Management; and

(2) the Director may delegate, in whole or in part, any function vested in or delegated to the Director, including authority for competitive examinations (except competitive examinations for administrative law judges appointed under section 3105 of this title), to the heads of agencies in the executive branch and other agencies employing persons in the competitive service;

except that the Director may not delegate authority for competitive examinations with respect to positions that have requirements which are common to agencies in the Federal Government, other than in exceptional cases in which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles.

(b)(1) The Office shall establish standards which shall apply to the activities of the Office or any other agency under authority delegated under subsection (a) of this section.

(2) The Office shall establish and maintain an oversight program to ensure that activities under any authority delegated under subsection (a) of this section are in accordance with the merit system principles and the standards established under paragraph (1) of this subsection.

(3) Nothing in subsection (a) of this section shall be construed as affecting the responsibility of the Director to prescribe regulations and to ensure compliance with the civil service laws, rules, and regulations.

(c) If the Office makes a written finding, on the basis of information obtained under the program established under subsection (b)(2) of this section or otherwise, that any action taken by an agency pursuant to authority delegated under subsection (a)(2) of this section is contrary to any law, rule, or regulation, or is contrary to any standard established under subsection (b)(1) of this section, the agency involved shall take any corrective action the Office may require.

(As amended Pub. L. 95–454, title II, § 201(a), Oct. 13, 1978, 92 Stat. 1120.)

AMENDMENTS

1978—Pub. L. 95–454 substituted in catchline "Delegation of authority for personnel management" for "Functions of Chairman" and in text provisions relating to the delegation of authority for personnel management for provisions relating to functions of the Chairman of the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1103 of this title.

§ 1105. Administrative procedure

Subject to section 1103(b) of this title, in the exercise of the functions assigned under this chapter, the Director shall be subject to subsections (b), (c), and (d) of section 553 of this title, notwithstanding subsection (a) of such section 553.

(As amended Pub. L. 95-454, title II, § 201(a), Oct. 13, 1978, 92 Stat. 1121.)

AMENDMENTS

1978—Pub. L. 95-454 substituted in catchline "Administrative procedure" for "Boards of examiners" and in text provisions relating to administrative procedure applicable to administration of this chapter for provisions relating to boards of examiners for the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL

Sec.
1201. Appointment of members of the Merit Systems Protection Board.
1202. Term of office; filling vacancies; removal.
1203. Chairman; Vice Chairman.
1204. Special Counsel; appointment and removal.
1205. Powers and functions of the Merit Systems Protection Board and Special Counsel.
1206. Authority and responsibilities of the Special Counsel.
1207. Hearings and decisions on complaints filed by the Special Counsel.
1208. Stays of certain personnel actions.
1209. Information.

§ 1201. Appointment of members of the Merit Systems Protection Board

The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same political party. The Chairman and members of the Board shall be individuals who, by demonstrated ability, background, training, or experience are especially qualified to carry out the functions of the Board. No member of the Board may hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President. The Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations.

(Added Pub. L. 95-454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1121.)

EFFECTIVE DATE

Chapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

TERMS OF OFFICE OF MEMBERS

Section 202(b) of Pub. L. 95-454 provided that: "Any term of office of any member of the Merit Systems Protection Board serving on the effective date of this Act [see Effective Date of 1978 Amendment note under section 1101 of this title] shall continue in effect until the term would expire under section 1102 of title 5, United States Code, as in effect immediately before the effective date of this Act, and upon expiration of the term, appointments to such office shall be made under sections 1201 and 1202 of title 5, United States Code (as added by this section)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1202 of this title.

§ 1202. Term of office, filling vacancies; removal

(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

(b) A member appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201 of this title.

(c) Any member appointed for a 7-year term may not be reappointed to any following term but may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that such member may not continue to serve for more than one year after the date on which the term of the member would otherwise expire under this section.

(d) Any member may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(Added Pub. L. 95-454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1122.)

§ 1203. Chairman; Vice Chairman

(a) The President shall from time to time, appoint, by and with the advice and consent of the Senate, one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

(b) The President shall from time to time designate one of the members of the Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

(c) During the absence or disability of both the Chairman and Vice Chairman, or when the offices of Chairman and Vice Chairman are vacant, the remaining Board member shall perform the functions vested in the Chairman.

(Added Pub. L. 95-454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1122.)

§ 1204. Special Counsel; appointment and removal

The Special Counsel of the Merit Systems Protection Board shall be appointed by the President from attorneys, by and with the advice and consent of the Senate, for a term of 5 years. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of the term. The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(Added Pub. L. 95-454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1122.)

§ 1205. Powers and functions of the Merit Systems Protection Board and Special Counsel

(a) The Merit Systems Protection Board shall—

(1) hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title, section 2023 of title 38, or any other law, rule, or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter;

(2) order any Federal agency or employee to comply with any order or decision issued by the Board under the authority granted under paragraph (1) of this subsection and enforce compliance with any such order;

(3) conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected; and

(4) review, as provided in subsection (e) of this section, rules and regulations of the Office of Personnel Management.

(b)(1) Any member of the Merit Systems Protection Board, the Special Counsel, any administrative law judge appointed by the Board under section 3105 of this title, and any employee of the Board designated by the Board may administer oaths, examine witnesses, take depositions, and receive evidence.

(2) Any member of the Board, the Special Counsel, and any administrative law judge appointed by the Board under section 3105 of this title may—

(A) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia; and

(B) order the taking of depositions and order responses to written interrogatories.

(3) Witnesses (whether appearing voluntarily or under subpena) shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

(c) In the case of contumacy or failure to obey a subpena issued under subsection (b)(2) of this section, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d)(1) In any proceeding under subsection (a)(1) of this section, any member of the Board may request from the Director of the Office of Personnel Management an advisory opinion concerning the interpretation of any rule, regulation, or other policy directive promulgated by the Office of Personnel Management.

(2) In enforcing compliance with any order under subsection (a)(2) of this section, the Board may order that any employee charged with complying with such order, other than an employee appointed by the President by and with the advice and consent of the Senate, shall not be entitled to receive payment for service as an employee during any period that the order has not been complied with. The Board shall certify to the Comptroller General of the United States that such an order has been issued and no payment shall be made out of the Treasury of the United States for any service specified in such order.

(3) In carrying out any study under subsection (a)(3) of this section, the Board shall make such inquiries as may be necessary and, unless otherwise prohibited by law, shall have access to personnel records or information collected by the Office and may require additional reports from other agencies as needed.

(e)(1) At any time after the effective date of any rule or regulation issued by the Director in carrying out functions under section 1103 of this title, the Board shall review any provision of such rule or regulation—

(A) on its own motion;

(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

(C) on the filing of a written complaint by the Special Counsel requesting such review.

(2) In reviewing any provision of any rule or regulation pursuant to this subsection the Board shall declare such provision—

(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face, require any employee to violate section 2302(b) of this title; or

(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision, has required any employee to violate section 2302(b) of this title.

(3)(A) The Director of the Office of Personnel Management, and the head of any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

(B) Any review conducted by the Board pursuant to this subsection shall be limited to determining—

(i) the validity on its face of the provision under review; and

(ii) whether the provision under review has been validly implemented.

(C) The Board shall require any agency—

(i) to cease compliance with any provisions of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

(ii) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been invalidly implemented by the agency.

(f) The Board may delegate the performance of any of its administrative functions under this title to any employee of the Board.

(g) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. All regulations of the Board shall be published in the Federal Register.

(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Board may appear for the Board, and represent the Board, in any civil action brought in connection with any function carried out by the Board pursuant to this title or as otherwise authorized by law.

(i) The Chairman of the Board may appoint such personnel as may be necessary to perform the functions of the Board. Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33 of this title).

(j) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall, as revised, be included as a separate item in the budget required to be transmitted to the Congress under section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11).

(k) The Board shall submit to the President, and, at the same time, to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title.

(Added Pub. L. 95–454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1122.)

§ 1206. Authority and responsibilities of the Special Counsel

(a)(1) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(2) If the Special Counsel terminates any investigation under paragraph (1) of this subsection, the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of the termination of the investigation and the reasons therefor.

(3) In addition to authority granted under paragraph (1) of this subsection, the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(b)(1) In any case involving—

(A) any disclosure of information by an employee or applicant for employment which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation; or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if the disclosure is not specifically prohibited by law and if the information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure by an employee or applicant for employment to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation; or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

the identity of the employee or applicant may not be disclosed without the consent of the employee or applicant during any investigation under subsection (a) of this section or under paragraph (3) of this subsection, unless the Special Counsel determines that the disclosure of the identity of the employee or applicant is necessary in order to carry out the functions of the Special Counsel.

(2) Whenever the Special Counsel receives information of the type described in paragraph (1) of this subsection, the Special Counsel shall promptly transmit such information to the appropriate agency head.

(3)(A) In the case of information received by the Special Counsel under paragraph (1) of this section, if, after such review as the Special Counsel determines practicable (but not later than 15 days after the receipt of the information), the Special Counsel determines that there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to the public health or safety, the Special Counsel may, to the extent provided in subparagraph (B) of this paragraph, require the head of the agency to—

(i) conduct an investigation of the information and any related matters transmitted by the Special Counsel to the head of the agency; and

(ii) submit a written report setting forth the findings of the head of the agency within 60 days after the date on which the information is transmitted to the head of the agency or within any longer period of time agreed to in writing by the Special Counsel.

(B) The Special Counsel may require an agency head to conduct an investigation and submit a written report under subparagraph (A) of this paragraph only if the information was transmitted to the Special Counsel by—

(i) any employee or former employee or applicant for employment in the agency which the information concerns; or

(ii) any employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

(4) Any report required under paragraph (3)(A) of this subsection shall be reviewed and signed by the head of the agency and shall include—

(A) a summary of the information with respect to which the investigation was initiated;

(B) a description of the conduct of the investigation;

(C) a summary of any evidence obtained from the investigation;

(D) a listing of any violation or apparent violation of any law, rule, or regulation; and

(E) a description of any corrective action taken or planned as a result of the investigation, such as—

(i) changes in agency rules, regulations, or practices;

(ii) the restoration of any aggrieved employee;

(iii) disciplinary action against any employee; and

(iv) referral to the Attorney General of any evidence of a criminal violation.

(5)(A) Any such report shall be submitted to the Congress, to the President, and to the Special Counsel for transmittal to the complainant. Whenever the Special Counsel does not receive the report of the agency head within the time prescribed in paragraph (3)(A)(ii) of this subsection, the Special Counsel may transmit a copy of the information which was transmitted to the agency head to the President and to the Congress together with a statement noting the failure of the head of the agency to file the required report.

(B) In any case in which evidence of a criminal violation obtained by an agency in an investigation under paragraph (3) of this subsection is referred to the Attorney General—

(i) the report shall not be transmitted to the complainant; and

(ii) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

(6) Upon receipt of any report of the head of any agency required under paragraph (3)(A)(ii) of this subsection, the Special Counsel shall review the report and determine whether—

(A) the findings of the head of the agency appear reasonable; and

(B) the agency's report under paragraph (3)(A)(ii) of this subsection contains the information required under paragraph (4) of this subsection.

(7) Whenever the Special Counsel transmits any information to the head of the agency under paragraph (2) of this subsection but does not require an investigation under paragraph (3) of this subsection, the head of the agency shall, within a reasonable time after the information was transmitted, inform the Special Counsel, in writing, of what action has been or is to be taken and when such action will be completed. The Special Counsel shall inform the complainant of the report of the agency head.

(8) Except as specifically authorized under this subsection, the provisions of this subsection shall not be considered to authorize disclosure of any information by any agency or any person which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(9) In any case under subsection (b)(1)(B) of this section involving foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(c)(1)(A) If, in connection with any investigation under this section, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken which requires corrective action, the Special Counsel shall report the determination together with any findings or recommendations to the Board, the agency involved, and to the Office, and may report the determination, findings, and recommendations to the President. The Special Counsel may include in the report recommendations as to what corrective action should be taken.

(B) If, after a reasonable period, the agency has not taken the corrective action recommended, the Special Counsel may request the Board to consider the matter. The Board may order such corrective action as the Board considers appropriate, after opportunity for comment by the agency concerned and the Office of Personnel Management.

(2)(A) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

(B) In any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel may proceed with any investigation or proceeding instituted under this section notwithstanding that the alleged violation has been reported to the Attorney General.

(3) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regula-

tion has occurred which is not referred to in paragraph (1) or (2) of this subsection, the violation shall be reported to the head of the agency involved. The Special Counsel shall require, within 30 days of the receipt of the report by the agency, a certification by the head of the agency which states—

(A) that the head of the agency has personally reviewed the report; and

(B) what action has been, or is to be, taken, and when the action will be completed.

(d) The Special Counsel shall maintain and make available to the public a list of noncriminal matters referred to heads of agencies under subsections (b)(3)(A) and (c)(3) of this section, together with—

(1) reports by the heads of agencies under subsection (b)(3)(A) of this section, in the case of matters referred under subsection (b); and

(2) certifications by heads of agencies under subsection (c)(3), in the case of matters referred under subsection (c).

The Special Counsel shall take steps to ensure that any such public list does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs.

(e)(1) In addition to the authority otherwise provided in this section, the Special Counsel shall, except as provided in paragraph (2) of this subsection, conduct an investigation of any allegation concerning—

(A) political activity prohibited under subchapter III of chapter 73 of this title, relating to political activities by Federal employees;

(B) political activity prohibited under chapter 15 of this title, relating to political activities by certain State and local officers and employees;

(C) arbitrary or capricious withholding of information prohibited under section 552 of this title, except that the Special Counsel shall make no investigation under this subsection of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

(D) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

(E) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

(2) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in paragraph (1)(D) or (1)(E) of this subsection if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

(f) During any investigation initiated under this section, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

(g)(1) Except as provided in paragraph (2) of this subsection, if the Special Counsel determines that disciplinary action should be taken against any employee—

(A) after any investigation under this section, or

(B) on the basis of any knowing and willful refusal or failure by an employee to comply with an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing his determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Merit Systems Protection Board in accordance with section 1207 of this title.

(2) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in paragraph (1) of this subsection, together with any response by the employee, shall be presented to the President for appropriate action in lieu of being presented under section 1207 of this title.

(h) If the Special Counsel believes there is a pattern of prohibited personnel practices and such practices involve matters which are not otherwise appealable to the Board under section 7701 of this title, the Special Counsel may seek corrective action by filing a written complaint with the Board against the agency or employee involved and the Board shall order such corrective action as the Board determines necessary.

(i) The Special Counsel may as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board and the Special Counsel shall not have any right of judicial review in connection with such intervention.

(j)(1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

(2) Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33 of this title).

(k) The Special Counsel may prescribe regulations relating to the receipt and investigation of matters under the jurisdiction of the Special Counsel. Such regulations shall be published in the Federal Register.

(*l*) The Special Counsel shall not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73 of this title).

(m) The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number,

types, and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, and actions initiated by it before the Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this section, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this subsection shall include whatever recommendations for legislation or other action by Congress the Special Counsel may deem appropriate.

(Added Pub. L. 95–454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1125.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1207, 2303, 7502, 7512, 7521, 7542 of this title.

§ 1207. Hearings and decisions on complaints filed by the Special Counsel

(a) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under section 1206(g) of this title is entitled to—

(1) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(2) be represented by an attorney or other representative;

(3) a hearing before the Board or an administrative law judge appointed under section 3105 of this title and designated by the Board;

(4) have a transcript kept of any hearing under paragraph (3) of this subsection; and

(5) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

(b) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

(c) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this section may obtain judicial review of the order in the United States court of appeals for the judicial circuit in which the employee resides or is employed at the time of the action.

(d) In the case of any State or local officer or employee under chapter 15 of this title, the Board shall consider the case in accordance with the provisions of such chapter.

(Added Pub. L. 95–454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1130.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1206 of this title.

§ 1208. Stays of certain personnel actions

(a)(1) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 15 calendar days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

(2) Any member of the Board requested by the Special Counsel to order a stay under paragraph (1) of this subsection shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

(3) Unless denied under paragraph (2) of this subsection, any stay under this subsection shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

(b) Any member of the Board may, on the request of the Special Counsel, extend the period of any stay ordered under subsection (a) of this section for a period of not more than 30 calendar days.

(c) The Board may extend the period of any stay granted under subsection (a) of this section for any period which the Board considers appropriate, but only if the Board concurs in the determination of the Special Counsel under such subsection, after an opportunity is provided for oral or written comment by the Special Counsel and the agency involved.

(Added Pub. L. 95–454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1130.)

§ 1209. Information

(a) Notwithstanding any other provision of law or any rule, regulation or policy directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.

(b) The Board shall submit an annual report to the President and the Congress on its activities, which shall include a description of significant actions taken by the Board to carry out its functions under this title. The report shall also review the significant actions of the Office of Personnel Management, including an analysis of whether the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

(Added Pub. L. 95–454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1131.)

CHAPTER 13—SPECIAL AUTHORITY

Sec.
1305. Administrative law judges.

AMENDMENTS

1978—Pub. L. 95–251, § 2(c)(1), Mar. 27, 1978, 92 Stat. 183, substituted "Administrative law judges" for "Hearing examiners" in item 1305.

§ 1301. Rules

The Office of Personnel Management shall aid the President, as he may request, in preparing the rules he prescribes under this title for the administration of the competitive service.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 1302. Regulations

(a) The Office of Personnel Management, subject to the rules prescribed by the President under this title for the administration of the competitive service, shall prescribe regulations for, control, supervise, and preserve the records of, examinations for the competitive service.

(b) The Office shall prescribe and enforce regulations for the administration of the provisions of this title, and Executive orders issued in furtherance thereof, that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the competitive service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(c) The Office shall prescribe regulations for the administration of the provisions of this title that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the excepted service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(d) The Office may prescribe reasonable procedure and regulations for the administration of its functions under chapter 15 of this title.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsecs. (b) to (d). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

EXECUTIVE ORDER NO. 10561

Ex. Ord. No. 10561, Sept. 13, 1954, 19 F.R. 5963, set out as a note under this section, which related to official personnel folders, was revoked by section 2-201 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1303 of this title; title 18 section 1917; title 22 section 1438; title 38 sections 106, 4202.

§ 1303. Investigations; reports

The Office of Personnel Management, Merit Systems Protection Board, and Special Counsel may investigate and report on matters concerning—

(1) the enforcement and effect of the rules prescribed by the President under this title for the administration of the competitive service and the regulations prescribed by the Office of Personnel Management under section 1302(a) of this title; and

(2) the action of an examiner, a board of examiners, and other employees concerning the execution of the provisions of this title that relate to the administration of the competitive service.

(As amended Pub. L. 95-454, title IX, § 906(a)(4), (11), Oct. 13, 1978, 92 Stat. 1225.)

AMENDMENTS

1978—Pub. L. 95-454 substituted in opening par. "Office of Personnel Management, Merit Systems Protection Board, and Special Counsel" for "Civil Service Commission" and in par. (1) "Office of Personnel Management" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 1304. Loyalty investigations; reports; revolving fund

(a) The Office of Personnel Management shall conduct the investigations and issue the reports required by the following statutes—

(1) sections 272b, 281b(e), 290a, and 1434 of title 22;

(2) section 1874(c) of title 42; and

(3) section 1203(e) of title 6, District of Columbia Code.

(b) When an investigation under subsection (a) of this section develops data indicating that the loyalty of the individual being investigated is questionable, the Office shall refer the matter to the Federal Bureau of Investigation for a full field investigation, a report of which shall be furnished to the Office for its information and appropriate action.

(c) When the President considers it in the national interest, he may have the investigations of a group or class, which are required by subsection (a) of this section, made by the Federal Bureau of Investigation rather than the Office.

(d) The investigation and report required by subsection (a) of this section shall be made by the Federal Bureau of Investigation rather than the Office for those specific positions which the Secretary of State certifies are of a high degree of importance or sensitivity.

(e)(1) A revolving fund is available, to the Office without fiscal year limitation, for financing investigations, training, and such other functions as the Office is authorized or required to perform on a reimbursable basis.

However, the functions which may be financed in any fiscal year by the fund are restricted to those functions which are covered by the budget estimates submitted to the Congress for that fiscal year. To the maximum extent feasible, each individual activity shall be conducted generally on an actual cost basis over a reasonable period of time.

(2) The capital of the fund consists of the aggregate of—

(A) appropriations made to provide capital for the fund, which appropriations are hereby authorized, and

(B) the sum of the fair and reasonable value of such supplies, equipment, and other assets as the Office from time to time transfers to the fund (including the amount of the unexpended balances of appropriations or funds relating to activities the financing of which is transferred to the fund) less the amount of related liabilities, the amount of unpaid obligations, and the value of accrued annual leave of employees, which are attributable to the activities the financing of which is transferred to the fund.

(3) The fund shall be credited with—

(A) advances and reimbursements from available funds of the Office or other agencies, or from other sources, for those services and supplies provided at rates estimated by the Office as adequate to recover expenses of operation (including provision for accrued annual leave of employees and depreciation of equipment); and

(B) receipts from sales or exchanges of property, and payments for loss of or damage to property, accounted for under the fund.

(4) Any unobligated and unexpended balances in the fund which the Office determines to be in excess of amounts needed for activities financed by the fund shall be deposited in the Treasury of the United States as miscellaneous receipts.

(5) The Office shall prepare a business-type budget providing full disclosure of the results of operations for each of the functions performed by the Office and financed by the fund, and such budget shall be transmitted to the Congress and considered, in the manner prescribed by law for wholly owned Government corporations.

(6) The Comptroller General of the United States shall, as a result of his periodic reviews of the activities financed by the fund, report and make such recommendations as he deems appropriate to the Committees on Post Office and Civil Service of the Senate and House of Representatives at least once every three years.

(f) An agency may use available appropriations to reimburse the Office or the Federal Bureau of Investigation for the cost of investigations, training, and functions performed for them under this section, or to make advances toward their cost. These advances and reimbursements shall be credited directly to the applicable appropriations of the Office or the Federal Bureau of Investigation.

(g) This section does not affect the responsibility of the Federal Bureau of Investigation to investigate espionage, sabotage, or subversive acts.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsecs. (b) to (f). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing therein.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

ABOLITION OF COMMITTEE

The Post Office and Civil Service Committee of the Senate, referred to in subsec. (e)(6), was abolished and the jurisdiction thereof was vested generally in the Committee on Governmental Affairs of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

§ 1305. Administrative law judges

For the purpose of section 3105, 3344, 4301(2)(D), and 5372 of this title and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, the Office of Personnel Management may, and for the purpose of section 7521 of this title, the Merit Systems Protection Board may investigate, require reports by agencies, issue reports, including an annual report to Congress, prescribe regulations, appoint advisory committees as necessary, recommend legislation, subpena witnesses and records, and pay witness fees as established for the courts of the United States.

(As amended Pub. L. 95-251, § 2(a)(1), (b)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, title VIII, § 801(a)(3)(B)(iii), title IX, § 906(a)(12), 92 Stat. 1221, 1225.)

AMENDMENTS

1978—Pub. L. 95-454 substituted provisions respecting functions pursuant to specified sections of this title of the Office of Personnel Management and the Merit Systems Protection Board for provisions respecting the functions pursuant to specified sections of this title of the Civil Service Commission.

Pub. L. 95-251 substituted "Administrative law judges" for "Hearing examiners" in the section catchline and "administrative law judges" for "hearing examiners" in the text.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 801(a)(3)(B)(iii) of Pub. L. 95-454 substituting "5372" for "5362" effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 906(a)(12) of Pub. L. 95-454 respecting functions of the Office and the Board effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 1306. Oaths to witnesses

The Director of the Office of Personnel Management and authorized representatives of the

Director may administer oaths to witnesses in matters pending before the Office.

(As amended Pub. L. 95-454, title IX, § 906(a)(13), Oct. 13, 1978, 92 Stat. 1226.)

AMENDMENTS

1978—Pub. L. 95-454 substituted provisions respecting powers of the Director of the Office of Personnel Management in adminsitering oaths in matters before the Office for provisions respecting powers of the Chairman of the Civil Service Commission and each Commissioner in administering oaths in matters before the Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 1307. Minutes

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of this title, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of this title.

§ 1308. Annual reports

(a) The Office of Personnel Management shall make an annual report to the President for transmittal to Congress. The report shall include—

(1) a statement of the Office's actions in the administration of the competitive service, the rules and regulations and exceptions thereto in force the reasons for exceptions to the rules, the practical effects of the rules and regulations, and any recommendations for the more effectual accomplishment of the purposes of the provisions of this title that relate to the administration of the competitive service;

(2) the results of the incentive awards program authorized by chapter 45 of this title with related recommendations;

(3) at the end of each fiscal year, the names, addresses, and nature of employment of the individuals on whom the Office has imposed a penalty for prohibited political activity under section 7325 of this title, with a statement of the facts on which action was taken, and the penalty imposed; and

(4) a statement, in the form determined by the Office with the approval of the President, on the training of employees under chapter 41 of this title, including—

(A) a summary of information concerning the operation and results of the training programs and plans of the agencies;

(B) a summary of information received by the Office from the agencies under section 4113(b) of this title; and

(C) the recommendations and other matters considered appropriate by the President or the Office or required by Congress.

(b) The Office shall annually provide an analysis to Congress of the administration and operation of chapter 41 of this title.

(c) The Office shall publish an annual report on the operation of subchapter III of chapter 83 of this title, including a statement concerning the status of the Civil Service Retirement and Disability Fund.

(d) The Office shall report annually to Congress on the operation of chapter 87 of this title.

(e) The Office shall report annually to Congress on the operation of chapter 89 of this title.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing therein.

Subsecs. (b) to (e). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3407, 4705, 5404 of this title.

CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1206, 1207, 1302, 4703 of this title; title 23 section 142; title 29 section 833; title 42 sections 2930e, 2943, 2996e, 4728; title 49 section 1604.

§ 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1504, 1505, 1506 of this title; title 42 sections 2930e, 2943.

§ 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Special Counsel. On receipt of the report or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present his findings and any charges based on such findings to the Merit Systems Protection Board, which shall—

[See main edition for text of (1), (2), and closing sentence]

(As amended Pub. L. 95-454, title IX, § 906(a)(7), Oct. 13, 1978, 92 Stat. 1225.)

AMENDMENTS

1978—Pub. L. 95-454 substituted provisions respecting the functions of the Special Counsel and the Merit Systems Protection Board for provisions respecting the functions of the Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 1505. Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Merit Systems Protection Board shall—

(1) determine whether a violation of section 1502 of this title has occurred;

(2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and

(3) notify the officer or employee and the agency of the determination by registered or certified mail.

(As amended Pub. L. 95-454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Merit Systems Protection Board" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 1506. Orders; withholding loans or grants; limitations

(a) When the Merit Systems Protection Board finds—

(1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he has violated section 1502 of this title and that the violation warrants removal; or

(2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State in a State or local agency which does not receive loans or grants from a Federal agency;

the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by section 1508 of this title, a determination of order of the Board becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Board may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.

(As amended Pub. L. 95-454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 substituted "Merit Systems Protection Board" for "Civil Service Commission" and "Board" for "Commission", respectively, wherever appearing.

Subsecs. (b), (c). Pub. L. 95-454 substituted "Board" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 1507. Subpenas and depositions

(a) The Merit Systems Protection Board may require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Board may sign subpenas, and members of the Board and its examiners when authorized by the Board may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpena, the Board may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Board, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Board may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Board as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpena on the ground that the testimony or evidence, documentary or otherwise required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Board in obedience to a subpena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

(As amended Pub. L. 95-454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 substituted "Merit Systems Protection Board" and "Board" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

Subsecs. (b), (c). Pub. L. 95-454 substituted "Board" for "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 1508. Judicial review

A party aggrieved by a determination or order of the Merit Systems Protection Board under section 1504, 1505, or 1506 of this title may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless—

(1) the court specifically orders a stay; and

(2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Board, and thereupon the Board shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Board, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; or the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Board with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Board, the determination or order becomes final and effective as to that party as if the provision had not been enacted.

(As amended Pub. L. 95-454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Merit Systems Protection Board" and "Board" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

PART III—EMPLOYEES

Subpart A—General Provisions

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71.	Labor-Management Relations	7101
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AMENDMENTS

1978—Pub. L. 95-454, title I, § 101(b)(1), title II, § 203(b), title V, § 503(i), title VI, § 601(b), title VII, § 703(b), title IX, § 906(c)(5), Oct. 13, 1978, 92 Stat. 1118, 1134, 1184, 1188, 1217, 1227, added chapters 23, 34, 47, 54, and 72, substituted in heading of chapter 43 "Appraisal" for "Rating" and in heading of chapter 71 "Labor-Management Relations" for "Policies", and inserted in heading of subpart F "Labor-Management and " preceding "Employee".

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 29 section 795b; title 42 section 3056b; title 45 section 719.

Subpart A—General Provisions

CHAPTER 21—DEFINITIONS

Sec.
2101a. The Senior Executive Service.

AMENDMENTS

1978—Pub. L. 95–454, title IV, § 401(e), Oct. 13, 1978, 92 Stat. 1154, added item 2101a.

§ 2101a. The Senior Executive Service

The "Senior Executive Service" consists of Senior Executive Service positions (as defined in section 3132(a)(2) of this title).

(Added Pub. L. 95–454, title IV, § 401(a), Oct. 13, 1978, 92 Stat. 1154.)

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

§ 2102. The competitive service

(a) The "competitive service" consists of—

(1) all civil service positions in the executive branch, except—

(A) positions which are specifically excepted from the competitive service by or under statute;

(B) positions to which appointments are made by nomination for confirmation by the Senate, unless the Senate otherwise directs; and

(C) positions in the Senior Executive Service;

[*See main edition for text of (2), (3); (b) and (c)*]

(As amended Pub. L. 95–454, title IV, § 401(b), Oct. 13, 1978, 92 Stat. 1154.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95–454 added clause (C).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(1) effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3132 of this title; title 42 section 2000e.

§ 2103. The excepted service

(a) For the purpose of this title, the "excepted service" consists of those civil service positions which are not in the competitive service or the Senior Executive Service.

[*See main edition for text of (b)*]

(As amended Pub. L. 95–454, title IV, § 401(c), Oct. 13, 1978, 92 Stat. 1154.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454 inserted reference to the Senior Executive Service.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

§ 2105. Employee

[*See main edition for text of (a) and (b)*]

(c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Stores Ashore, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the armed forces is deemed not an employee for the purpose of—

(1) laws (other than subchapter IV of chapter 53 and sections 5550 and 7204 of this title) administered by the Office of Personnel Management; or

(2) subchapter I of chapter 81 and section 7902 of this title.

This subsection does not affect the status of these nonappropriated fund activities as Federal instrumentalities.

[*See main edition for text of (d) and (e)*]

(As amended Pub. L. 95–454, title VII, § 703(c)(2), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1217, 1224.)

CODIFICATION

Amendments by section 703 (c)(1) and (c)(2) of Pub. L. 95–454 appear to have been inadvertently reversed. Subsec. (c)(1) purports to amend subsec. (c)(1) of this section, and subsec. (c)(2) purports to amend section 3302(2) of this title. However, the amendments specified by Pub. L. 95–454, § 703(c) (1) and (2), are impossible to execute literally. Thus, the amendment by Pub. L. 95–454, § 703(c)(2) was executed to this section, and the amendment by section 703(c)(1) was executed to section 3302(2) of this title as the probable intent of Congress.

AMENDMENTS

1978—Subsec. (c)(1). Pub. L. 95–454 substituted "7204" for "7154", and "Office of Personnel Management" for "Civil Service Commission". See Codification note above.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3551, 4501, 5342, 5506, 5515, 5537, 5551, 5552, 5581, 5595, 5751, 5945, 5946, 6103, 6104, 6301, 6322, 6323, 7103, 7119, 7342, 8171, 8172, 8173, 8311, 8331, 8701, 8901 of this title; title 10 section 975; title 25 section 450i.

§ 2107. Congressional employee

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8331, 8701, 8901 of this title; title 2 section 31b-5; title 26 section 7448; title 31 section 43b.

§ 2108. Veteran; disabled veteran; preference eligible

For the purpose of this title—

[*See main edition for text of (1)*]

(2) "disabled veteran" means an individual who has served on active duty in the armed forces, has been separated therefrom under honorable conditions, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Veterans' Administration or a military department;

(3) "preference eligible" means, except as provided in paragraph (4) of this section—

(A) a veteran as defined by paragraph (1)(A) of this section;

(B) a veteran as defined by paragraph (1)(B) of this section;

(C) a disabled veteran;

(D) the unmarried widow or widower of a veteran as defined by paragraph (1)(A) of this section;

(E) the wife or husband of a service-connected disabled veteran if the veteran has been unable to qualify for any appointment in the civil service or in the government of the District of Columbia;

(F) the mother of an individual who lost his life under honorable conditions while serving in the armed forces during a period named by paragraph (1)(A) of this section, if—

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed; and

(G) the mother of a service-connected permanently and totally disabled veteran, if—

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed;

(4) except for the purposes of chapters 43 and 75 of this title, "preference eligible" does not include a retired member of the armed forces unless—

(A) the individual is a disabled veteran; or

(B) the individual retired below the rank of major or its equivalent; and

(5) "retired member of the armed forces" means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member; but does not include applicants for, or members of, the Senior Executive Service.

(As amended Pub. L. 95-454, title III, § 307(a), title IV, § 401(d), Oct. 13, 1978, 92 Stat. 1147, 1154.)

CODIFICATION

Pub. L. 95-454, § 401(d), purported to amend par. (5) of this section, which defines "retired member of the armed forces". However, Senate Report No. 95-969, p. 68, in explaining the amendment to be effected by such section 401(d), states that it is designed to exclude Senior Executive Service applicants or members from the rules on preference eligibles. Senate Report No. 95-969, p. 151, thereafter shows the amendment as executed to par. (3) of this section, which relates to preference eligibles. The execution of Pub. L. 95-454, § 401(d), to par. (3) of this section is also indicated in House Report No. 95-1403, pp. 26, 142. The amendment by Pub. L. 95-454, § 401(d), has been executed to par. (5) of this section and not to par. (3).

AMENDMENTS

1978—Par. (2). Pub. L. 95-454, § 307(a)(1), struck out "and" at the end of par. (2).

Par. (3). Pub. L. 95-454, § 307(a) (2), (3), inserted ", except as provided in paragraph (4) of this section" after "means", and substituted a semicolon for the period at the end thereof.

Pars. (4), (5). Pub. L. 95-454, § 307(a)(4), added pars. (4) and (5) relating to retired members of the armed forces.

Par. (5). Pub. L. 95-454, § 401(d), added "; but does not include applicants for, or members of, the Senior Executive Service" before the period at the end thereof. See Codification note above.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 307(a) of Pub. L. 95-454 provided in part that the amendments to pars. (2)-(5) made by section 307(a) are effective Oct. 1, 1980.

Amendment of Par. (5) made by section 401(d) of Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3305, 3309, 3312, 3318, 3502, 3504 of this title; title 22 sections 1234, 1438; title 32 section 709; title 38 sections 106, 4202; title 39 section 1005.

CHAPTER 23—MERIT SYSTEM PRINCIPLES

Sec.
2301. Merit system principles.
2302. Prohibited personnel practices.
2303. Prohibited personnel practices in the Federal Bureau of Investigation.
2304. Responsibility of the General Accounting Office.
2305. Coordination with certain other provisions of law.

CHAPTER REFERRED TO IN OTHER SECTONS

This chapter is referred to in section 4703 of this title.

§ 2301. Merit system principles

(a) This section shall apply to—

(1) an Executive agency;

(2) the Administrative Office of the United States Courts; and

(3) the Government Printing Office.

(b) Federal personnel management should be implemented consistent with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be—

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter—

(1) with respect to any agency (as defined in section 2302(a)(2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and

(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives;

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

(Added Pub. L. 95-454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1113.)

EFFECTIVE DATE

Chapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2302 of this title.

§ 2302. Prohibited personnel practices

(a)(1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b) of this section.

(2) For the purpose of this section—

(A) "personnel action" means—

(i) an appointment;

(ii) a promotion;

(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

(iv) a detail, transfer, or reassignment;

(v) a reinstatement;

(vi) a restoration;

(vii) a reemployment;

(viii) a performance evaluation under chapter 43 of this title;

(ix) a decision concerning pay, benefits, or awards, concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph; and

(x) any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level;

with respect to an employee in, or applicant for, a covered position in an agency;

(B) "covered position" means any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include—

(i) a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

(ii) any position excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration.

(C) "agency" means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

(i) a Government corporation;

(ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the De-

fense Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

(iii) the General Accounting Office.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

(1) discriminate for or against any employee or applicant for employment—

(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

(B) an evaluation of the character, loyalty, or suitability of such individual;

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for—

(A) a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(9) take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States; or

(11) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be

similarly responsible within the limits of the delegation.

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

(Added Pub. L. 95–454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1114.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (c), are set out in this title. See, particularly, section 3301 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1205, 2301, 2303, 4703, 7116, 7121, 7701 of this title.

§ 2303. Prohibited personnel practices in the Federal Bureau of Investigation

(a) Any employee of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau as a reprisal for a disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose) which the employee or applicant reasonably believes evidences—

(1) a violation of any law, rule, or regulation, or

(2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

For the purpose of this subsection, "personnel action" means any action described in clauses (i) through (x) of section 2302(a)(2)(A) of this title with respect to an employee in, or applicant for, a position in the Bureau (other than a position of a confidential, policy-determining, policymaking, or policy-advocating character).

(b) The Attorney General shall prescribe regulations to ensure that such a personnel action shall not be taken against an employee of the Bureau as a reprisal for any disclosure of information described in subsection (a) of this section.

(c) The President shall provide for the enforcement of this section in a manner consistent with the provisions of section 1206 of this title.

(Added Pub. L. 95–454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1117.)

§ 2304. Responsibility of the General Accounting Office

(a) If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

(b) the[1] General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. The report shall include a description of—

(1) significant actions taken by the Board to carry out its functions under this title; and

(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office are in accord with merit system principles and free from prohibited personnel practices.

(Added Pub. L. 95–454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1118.)

§ 2305. Coordination with certain other provisions of law

No provision of this chapter, or action taken under this chapter, shall be construed to impair the authorities and responsibilities set forth in section 102 of the National Security Act of 1947 (61 Stat. 495; 50 U.S.C. 403), the Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), the Act entitled "An Act to provide certain administrative authorities for the National Security Agency, and for other purposes", approved May 29, 1959 (73 Stat. 63; 50 U.S.C. 402 note), and the Act entitled "An Act to amend the Internal Security Act of 1950", approved March 26, 1964 (78 Stat. 168; 50 U.S.C. 831–835).

(Added Pub. L. 95–454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1118.)

REFERENCES IN TEXT

The Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), referred to in text, is act June 20, 1949, ch. 227, 63 Stat. 208, as amended, which is classified generally to sections 403a to 403j of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 403a of Title 50 and Tables.

The Act entitled "An Act to provide certain administrative authorities for the National Security Agency, and for other purposes", approved May 29, 1959 (73 Stat. 63; 50 U.S.C. 402 note), referred to in text, is Pub. L. 86–36, May 29, 1959, 73 Stat. 63, as amended, and is set out as a note under section 402 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

The Act entitled "An Act to amend the Internal Security Act of 1950", approved March 26, 1964 (78 Stat.

[1] So in original. Should be "The".

168; 50 U.S.C. 831-835), referred to in text, is act Sept. 23, 1950, ch. 1024, title III, as added Mar. 26, 1964, Pub. L. 88-290, 78 Stat. 168, which is classified principally to subchapter III (§ 831 et seq.) of chapter 23 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

CHAPTER 29—COMMISSIONS, OATHS, RECORDS, AND REPORTS

SUBCHAPTER II—REPORTS

Sec.
2951. Reports to the Office of Personnel Management.

AMENDMENTS

1978—Pub. L. 95-454, title IX, § 906(a)(16), Oct. 13, 1978, 92 Stat. 1226, in item 2951 substituted "Office of Personnel Management" for "Civil Service Commission".

SUBCHAPTER II—REPORTS

§ 2951. Reports to the Office of Personnel Management

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that—

(1) the appointing authority notify the Office of Personnel Management in writing of the following actions and their dates as to each individual selected for appointment in the competitive service from among those who have been examined—

(A) appointment and residence of appointee;

(B) separation during probation;

(C) transfer;

(D) resignation;

(E) removal; and

(2) the Office keep records of these actions.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), (16), Oct. 13, 1978, 92 Stat. 1224, 1226.)

AMENDMENTS

1978—Pub. L. 95-454, § 906(a)(16), substituted "Office of Personnel Management" for "Civil Service Commission" in the catchline.

Par. (1). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Par. (2). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

SUBCHAPTER I—EMPLOYMENT AUTHORITIES

Sec.
3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees.
3105. Appointment of administrative law judges.
3111. Acceptance of volunteer service.
3112. Disabled veterans; noncompetitive appointment.

SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

3131. The Senior Executive Service.
3132. Definitions and exclusions.
3133. Authorization of positions; authority for appointment.
3134. Limitations on noncareer and limited appointments.
3135. Biennial report.
3136. Regulations.

AMENDMENTS

1978—Pub. L. 95-454, title III, §§ 301(b), 302(b)(1), 307(b)(3), title IV, § 402(c), Oct. 13, 1978, 92 Stat. 1145, 1146, 1148, 1160, added heading for subchapter I, in item 3102 substituted "reading assistants for blind employees and interpreting assistants for deaf employees" for "readers for blind employees", and added items 3111, 3112, heading for subchapter II, and items 3131 to 3136.

Pub. L. 95-251, § 2(c)(2), Mar. 27, 1978, 92 Stat. 184, substituted "administrative law judges" for "hearing examiners" in item 3105.

SUBCHAPTER I—EMPLOYMENT AUTHORITIES[1]

§ 3101. General authority to employ

LIMITATION THROUGH JANUARY 31, 1981, ON NUMBER OF CIVILIAN EMPLOYEES IN EXECUTIVE BRANCH

Pub. L. 95-454, title III, § 311, Oct. 13, 1978, 92 Stat. 1153, provided that:

"(a) The total number of civilian employees in the executive branch, on September 30, 1979, on September 30, 1980, and on September 30, 1981, shall not exceed the number of such employees on September 30, 1977.

"(b)(1) For the purpose of this section, 'civilian employees in the executive branch' means all civilian employees within the executive branch of the Government (other than in the United States Postal Service or the Postal Rate Commission), whether employed on a full-time, part-time, or intermittent basis and whether employed on a direct hire or indirect hire basis.

"(2)(A) Such term does not include individuals participating in special employment programs established for students and disadvantaged youth.

"(B) The total number of individuals participating in such programs shall not at any time exceed 60,000.

"(c) In applying the limitation of subsection (a)—

"(1) part-time civilian employees in excess of the number of part-time civilian employees in the executive branch employed on September 30, 1977, may be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employees' regularly scheduled workweek; and

"(2) the number of civilian employees in the executive branch on September 30, 1977, shall be determined on the basis of the number of such employees as set forth in the Monthly Report of Civilian Employment published by the Civil Service Commission.

"(d)(1) The provisions of this section shall not apply during a time of war or during a period of national emergency declared by the Congress or the President.

"(2)(A) Subject to the limitation of subparagraph (B) of this paragraph, the President may authorize employment of civilian employees in excess of the limitation of subsection (a) if he deems that such action is necessary in the public interest.

"(B) The President may not, under this paragraph, increase the maximum number of civilian employees in the executive branch by more than the percentage increase of the population of the United States since September 30, 1978, as estimated by the Bureau of the Census.

"(e) The President shall provide that no increase occurs in the procurement of personal services by con-

[1] Subchapter heading editorially added.

tract by reason of the enactment of this section except in cases in which it is to the financial advantage of the Government to do so.

"(f) The President shall prescribe regulations to carry out the purposes of this section.

"(g) The provisions of this section shall terminate on January 31, 1981."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 3 section 107; title 25 section 2a.

§ 3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees

(a) For the purpose of this section—

[*See main edition for text of (1) and (2)*]

(3) "blind employee" means an individual employed by an agency who establishes, to the satisfaction of the appropriate authority of the agency concerned and under regulations of the head of that agency, that he has an impairment of sight, either permanent or temporary, which is so severe or disabling that the employment of a reading assistant or assistants for that individual is necessary or desirable to enable him properly to perform his work;

(4) "deaf employee" means an individual employed by an agency who, in accordance with regulations prescribed by the head of the agency, establishes to the satisfaction of the appropriate authority of the agency concerned that the employee has a hearing impairment, either permanent or temporary, so severe or disabling that the employment of an interpreting assistant or assistants for the employee is necessary or desirable to enable such employee to perform the work of the employee; and

(5) "nonprofit organization" means an organization determined by the Secretary of the Treasury to be an organization described by section 501(c) of title 26 which is exempt from taxation under section 501(a) of title 26.

(b) The head of each agency may employ a reading assistant or assistants for a blind employee and interpreting assistant or assistants for a deaf employee of his agency, to serve without pay from the agency, without regard to—

(1) the provisions of this title governing appointment in the competitive service; and

(2) chapter 51 and subchapter III of chapter 53 of this title.

A reading assistant or an interpreting assistant, other than the one employed or assigned under subsection (d) of this section, may receive pay for services performed by the assistant by and from the blind or deaf employee or a nonprofit organization, without regard to section 209 of title 18.

(c) This section may not be held or considered to prevent or limit in any way the assignment to a blind or deaf employee by an agency of clerical or secretarial assistance, at the expense of the agency and under statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations.

(d) The head of each agency may also employ or assign, subject to section 209 of title 18 and to the provisions of this title governing appointment and chapter 51 and subchapter III of chapter 53 of this title governing classification and pay, such reading assistants for blind employees and such interpreting assistants for deaf employees as may be necessary to enable such employees to perform their work.

(As amended Pub. L. 95-454, title III, § 302 (a), (b)(2), Oct. 13, 1978, 92 Stat. 1145, 1146.)

AMENDMENTS

1978—Pub. L. 95-454, § 302(b)(2), substituted in catchline "reading assistants for blind employees and interpreting assistants for deaf employees" for "readers for blind employees".

Subsec. (a). Pub. L. 95-454, § 302(a)(1), added par. (4). Former par. (4) redesignated (5).

Subsec. (b). Pub. L. 95-454, § 302(a)(2), added provisions respecting applicability to employment and compensation for interpreting assistant or assistants for deaf employees.

Subsec. (c). Pub. L. 95-454, § 302(a)(3), added "or deaf" after "blind".

Subsec. (d). Pub. L. 95-454, § 302(a)(4), added subsec. (d).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 604; title 39 section 410.

§ 3104. Employment of specially qualified scientific and professional personnel

(a)(1) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of scientific or professional positions (not to exceed 517) for carrying out research and development functions which require the services of specially qualified personnel which may be established outside of the General Schedule. Any such position may be established only by action of the Director.

(2) The provisions of paragraph (1) of this subsection shall not apply to any Senior Executive Service position (as defined in section 3132(a) of this title).

(3) In addition to the number of positions authorized by paragraph (1) of this subsection, the Librarian of Congress may establish, without regard to the second sentence of paragraph (1) of this subsection, not more than 8 scientific or professional positions to carry out the research and development functions of the Library of Congress which require the services of specially qualified personnel.

(b) The head of each agency authorized to fix under section 5371 of this title the pay for positions established under this section shall submit to Congress not later than December 31 of each year (or in the case of the Administrator of the National Aeronautics and Space Administration not later than February 1 of each year), a report setting forth—

(1) the number of these positions established in his agency during that calendar year (or in the case of the National Aeronautics and Space Administration during the previous calendar year); and

(2) the name, rate of pay, and description of the qualifications of each incumbent, together with a statement of the functions performed by each.

When the head of such an agency considers full public report on these items detrimental to the national security, he may omit the items from his annual report and, instead, present the information in executive session of such committee of a House of Congress as the presiding officer thereof may designate.

(As amended Pub. L. 95–454, title IV, § 414(a)(2)(B), (C), title VIII, § 801(a)(3)(C), Oct. 13, 1978, 92 Stat. 1178, 1221.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 414(a)(2)(B), substituted provisions authorizing the Director to establish the maximum number of scientific or professional positions, excepting Senior Executive Service positions, and authorizing the Librarian to establish not more than 8 such positions for provisions authorizing the head of certain named agencies to establish a specified number of scientific or professional positions.

Subsec. (b). Pub. L. 95–454, § 414(a)(2)(B), (C), struck out former subsec. (b), redesignated subsec. (c) as subsec. (b), and substituted in subsec. (b), as redesignated, "to fix under section 5361 of this title the pay for positions established under this section" for "to establish and fix the pay of positions under this section and section 5361 of this title".

Pub. L. 95–454, § 801(a)(3)(C), substituted in subsec. (b), as redesignated, "section 5371 of this title" for "section 5361 of this title".

Subsec. (c). Pub. L. 95–454, § 414(a)(2)(C)(i), redesignated subsec. (c) as subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 801(a)(3)(C) of Pub. L. 95–454 effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 414(a)(2)(B), (C) of Pub. L. 95–454 effective 180 days after Oct. 13, 1978, see section 415(a)(3) of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

TERMINATION OF AUTHORITY TO ESTABLISH SCIENTIFIC OR PROFESSIONAL POSITIONS OUTSIDE THE GENERAL SCHEDULE

Section 414(a)(2)(A), of Pub. L. 95–454 provided that: "Notwithstanding any other provision of law (other than section 3104 of title 5, United States Code), the authority granted to an agency (as defined in section 5102(a)(1) of such title 5) to establish scientific or professional positions outside of the General Schedule is hereby terminated."

Section 415(a)(3) of Pub. L. 95–454 provided that the provisions of this note take effect 180 days after Oct. 13, 1978.

LIMITATIONS ON EXECUTIVE POSITIONS NOT TO APPLY TO INDIVIDUALS OCCUPYING THOSE POSITIONS ON OCTOBER 12, 1978

Section 414(a)(3) of Pub. L. 95–454 provided that:

"(A) The provisions of paragraphs (1) and (2) of this subsection [amending this section and section 5108 of this title] shall not apply with respect to any position so long as the individual occupying such position on the day before the date of the enactment of this Act [Oct. 13, 1978] continues to occupy such position.

"(B) The Director—

"(i) in establishing under section 5108 of title 5, United States Code, the maximum number of positions which may be placed in GS–16, 17, and 18 of the General Schedule, and

"(ii) in establishing under section 3104 of such title 5 the maximum number of scientific or professional positions which may be established,

shall take into account positions to which subparagraph (A) of this paragraph applies."

Section 415(a)(3) of Pub. L. 95–454 provided that the provisions of section 414(a)(3) are effective 180 days after Oct. 13, 1978.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3325, 5371 of this title; title 49 section 1655.

§ 3105. Appointment of administrative law judges

Each agency shall appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title. Administrative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges.

(As amended Pub. L. 95–251, § 2(a)(1), (b)(2), (d)(1), Mar. 27, 1978, 92 Stat. 183, 184.)

AMENDMENTS

1978—Pub. L. 95–251 substituted references to administrative law judges for references to hearing examiners in the section catchline and wherever appearing in the text.

REFERENCES TO HEARING EXAMINER DEEMED REFERENCES TO ADMINISTRATIVE LAW JUDGE

Section 3 of Pub. L. 95–251 provided that: "Any reference in any law, regulation, or order to a hearing examiner appointed under section 3105 of title 5, United States Code, shall be deemed to be a reference to an administrative law judge."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 554, 556, 559, 1104, 1205, 1207, 1305, 3132, 3344, 4301, 5108, 5335, 5372, 7105, 7132, 7521, 7701 of this title; title 15 sections 327, 1715; title 29 sections 661, 792; title 30 sections 804, 823, 932a; title 33 sections 873, 919; title 41 section 607; title 42 sections 2000e–4, 3608, 6303, 8220, 8433; title 43 sections 1817, 1845; title 47 section 410; title 49 sections 10305, 10344, 11346.

§ 3106. Employment of attorneys; restrictions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 810.

§ 3109. Employment of experts and consultants; temporary or intermittent

[*See main edition for text of (a) and (b)*]

(c) Positions in the Senior Executive Service may not be filled under the authority of subsection (b) of this section.

(As amended Pub. L. 95–454, title IV, § 402(b), Oct. 13, 1978, 92 Stat. 1160.)

AMENDMENT

1978—Subsec. (c). Pub. L. 95–454 added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Subsec. (c) effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 575, 5102, 5306, 7342 of this title; title 3 sections 105, 106, 107, 108; title 7 section 16; title 12 section 2405; title 15 sections 205i, 634d, 636, 1942, 2206, 2218, 2451; title 16 sections 410cc–36, 469b, 470m, 825q–1, 1052, 1406; title 17 section 805; title 18 sections 3153, 3168, 4204, 4352; title 19 sections 1331, 2171; title 20 sections 959, 1221e, 1233d, 1505, 2012, 2106; title 21 section 1116; title 22 sections 272a, 277d–3, 280b, 280i, 280k, 290b, 290f, 2024, 2083, 2102, 2103, 2386, 2512, 2581, 2873, 2905, 3106; title 23 section 303; title 25 section 640d–11; title 28 sections 602, 625; title 29 sections 656, 671, 676, 783, 954, 1302; title 31 sections 52c, 1154; title 40 sections 71a, 822, 873; title 42 sections 242b, 242*l*, 285, 287b, 289*l*–8, 300k–3, 300v–2, 1962a–4, 1975d, 2473, 2942, 3035a, 3211, 3525, 3765, 4343, 5042, 5149, 5612, 5816, 6616, 7171, 7211, 7233; title 43 section 1616; title 44 section 3319; title 49 sections 20, 26b, 1343, 1638, 1657, 1903, 10384; title 50 App. sections 2158, 2158a, 2169.

§ 3110. Employment of relatives; restrictions

[See main edition for text of (a) to (c)]

(d) The Office of Personnel Management may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this section.

[See main edition for text of (e)]

(As amended Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95–454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in 2302 of this title; title 39 section 410.

§ 3111. Acceptance of volunteer service

(a) For the purpose of this section, "student" means an individual who is enrolled, not less than half-time, in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such individual shows to the satisfaction of the Office of Personnel Management that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

(b) Notwithstanding section 3679(b) of the Revised Statutes (31 USC 665(b)), the head of an agency may accept, subject to regulations issued by the Office, voluntary service for the United States if the service—

(1) is performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experiences for the student;

(2) is to be uncompensated; and

(3) will not be used to displace any employee.

(c) Any student who provides voluntary service under subsection (b) of this section shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(Added Pub. L. 95–454, title III, § 301(a), Oct. 13, 1978, 92 Stat. 1144.)

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3112. Disabled veterans; noncompetitive appointment

Under such regulations as the Office of Personnel Management shall prescribe, an agency may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who has a compensable service-connected disability of 30 percent or more.

(Added Pub. L. 95–454, title III, § 307(b)(1), Oct. 13, 1978, 92 Stat. 1147.)

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

§ 3131. The Senior Executive Service

It is the purpose of this subchapter to establish a Senior Executive Service to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality. The Senior Executive Service shall be administered so as to—

(1) provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent senior executives;

(2) ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance (including such factors as improvements in effi-

ciency, productivity, quality of work or service, cost efficiency, and timeliness of performance and success in meeting equal employment opportunity goals);

(3) assure that senior executives are accountable and responsible for the effectiveness and productivity of employees under them;

(4) recognize exceptional accomplishment;

(5) enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

(6) provide for severance pay, early retirement, and placement assistance for senior executives who are removed from the Senior Executive Service for nondisciplinary reasons;

(7) protect senior executives from arbitrary or capricious actions;

(8) provide for program continuity and policy advocacy in the management of public programs;

(9) maintain a merit personnel system free of prohibited personnel practices;

(10) ensure accountability for honest, economical, and efficient Government;

(11) ensure compliance with all applicable civil service laws, rules, and regulations, including those related to equal employment opportunity, political activity, and conflicts of interest;

(12) provide for the initial and continuing systematic development of highly competent senior executives;

(13) provide for an executive system which is guided by the public interest and free from improper political interference; and

(14) appoint career executives to fill Senior Executive Service positions to the extent practicable, consistent with the effective and efficient implementation of agency policies and responsibilities.

(Added Pub. L. 95–454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1154.)

REFERENCES IN TEXT

The civil service laws, referred to in par. (11), are set out in this title. See, particularly, section 3301 et seq. of this title.

EFFECTIVE DATE

Section 415 of Pub. L. 95–454 provided that:

"(a)(1) The provisions of this title, other than sections 413 and 414(a) [enacting this subchapter and sections 2101a, 3391 to 3397, 3591 to 3595, 4311 to 4315, 4507, 5381 to 5385, 5752, and 7541 to 7543 of this title, amending sections 2102, 2103, 2108, 3109, 3501, 5311, 5331, 5504, 5541, 5595, 5723, 6304, 8336, and 8339 of this title, and enacting provisions set out as a note under section 5311 of this title], shall take effect 9 months after the date of the enactment of this Act [Oct. 13, 1978].

"(2) The provisions of section 413 of this title [set out as a note under section 3133 of this title] shall take effect on the date of the enactment of this Act [Oct. 13, 1978].

"(3) The provisions of section 414(a) of this title [amending sections 3104 and 5108 of this title and enacting provisions set out as notes under sections 3104 and 5108 of this title] shall take effect 180 days after the date of the enactment of this Act [Oct. 13, 1978].

"(b)(1) The amendments made by sections 401 through 412 of this title [enacting this subchapter and sections 2101a, 3391 to 3397, 3591 to 3595, 4311 to 4315, 4507, 5381 to 5385, 5752, and 7541 to 7543 of this title, amending sections 2102, 2103, 2108, 3109, 3501, 5311, 5331, 5504, 5541, 5595, 5723, 6304, 8336, and 8339 of this title] shall continue to have effect unless, during the first period of 60 calendar days of continuous session of the Congress beginning after 5 years after the effective date of such amendments, a concurrent resolution is introduced and adopted by the Congress disapproving the continuation of the Senior Executive Service. Such amendments shall cease to have effect on the first day of the first fiscal year beginning after the date of the adoption of such concurrent resolution.

"(2) The continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

"(3) The provisions of subsections (d), (e), (f), (g), (h), (i), (j), and (k) of section 5305 of title 5, United States Code, shall apply with respect to any concurrent resolution referred to in paragraph (1) of this subsection, except that for the purpose of this paragraph the reference in such subsection (e) to 10 calendar days shall be considered a reference to 30 calendar days.

"(4) During the 5-year period referred to in paragraph (1) of this subsection, the Director of the Office of Personnel Management shall include in each report required under section 3135 of title 5, United States Code (as added by this title) an evaluation of the effectiveness of the Senior Executive Service and the manner in which such Service is administered."

§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) "agency" means an Executive agency, except a Government corporation and the General Accounting Office, but does not include—

(A) any agency or unit thereof excluded from coverage by the President under subsection (c) of this section; or

(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, as determined by the President, an Executive agency, or unit thereof, whose principal function is the conduct of foreign intelligence or counterintelligence activities;

(2) "Senior Executive Service position" means any position in an agency which is in GS–16, 17, or 18 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and in which an employee—

(A) directs the work of an organizational unit;

(B) is held accountable for the success of one or more specific programs or projects;

(C) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;

(D) supervises the work of employees other than personal assistants; or

(E) otherwise exercises important policymaking, policy-determining, or other executive functions;

but does not include—

(i) any position in the Foreign Service of the United States;

(ii) an administrative law judge position under section 3105 of this title; or

(iii) any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (5 U.S.C. 5108 note; 90 Stat. 2425);

(3) "senior executive" means a member of the Senior Executive Service;

(4) "career appointee" means an individual in a Senior Executive Service position whose appointment to the position or previous appointment to another Senior Executive Service position was based on approval by the Office of Personnel Management of the executive qualifications of such individual;

(5) "limited term appointee" means an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term;

(6) "limited emergency appointee" means an individual appointed under a nonrenewable appointment, not to exceed 18 months, to a Senior Executive Service position established to meet a bona fide, unanticipated, urgent need;

(7) "noncareer appointee" means an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee;

(8) "career reserved position" means a position which is required to be filled by a career appointee and which is designated under subsection (b) of this section; and

(9) "general position" means any position, other than a career reserved position, which may be filled by either a career appointee, noncareer appointee, limited emergency appointee, or limited term appointee.

(b)(1) For the purpose of paragraph (8) of subsection (a) of this section, the Office shall prescribe the criteria and regulations governing the designation of career reserved positions. The criteria and regulations shall provide that a position shall be designated as a career reserved position only if the filling of the position by a career appointee is necessary to ensure impartiality, or the public's confidence in the impartiality, of the Government. The head of each agency shall be responsible for designating career reserved positions in such agency in accordance with such criteria and regulations.

(2) The Office shall periodically review general positions to determine whether the positions should be designated as career reserved. If the Office determines that any such position should be so designated, it shall order the agency to make the designation.

(3) Notwithstanding the provisions of any other law, any position to be designated as a Senior Executive Service position (except a position in the Executive Office of the President) which—

(A) is under the Executive Schedule, or for which the rate of basic pay is determined by reference to the Executive Schedule, and

(B) on the day before the date of the enactment of the Civil Service Reform Act of 1978 was specifically required under section 2102 of this title or otherwise required by law to be in the competitive service,

shall be designated as a career reserved position if the position entails direct responsibility to the public for the management or operation of particular government programs or functions.

(4) Not later than March 1 of each year, the head of each agency shall publish in the Federal Register a list of positions in the agency which were career reserved positions during the preceding calendar year.

(c) An agency may file an application with the Office setting forth reasons why it, or a unit thereof, should be excluded from the coverage of this subchapter. The Office shall—

(1) review the application and stated reasons,

(2) undertake a review to determine whether the agency or unit should be excluded from the coverage of this subchapter, and

(3) upon completion of its review, recommend to the President whether the agency or unit should be excluded from the coverage of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from the coverage of this subchapter, the President may, on written determination, make the exclusion for the period determined by the President to be appropriate.

(d) Any agency or unit which is excluded from coverage under subsection (c) of this section shall make a sustained effort to bring its personnel system into conformity with the Senior Executive Service to the extent practicable.

(e) The Office may at any time recommend to the President that any exclusion previously granted to an agency or unit thereof under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion made under subsection (c) of this section.

(f) If—

(1) any agency is excluded under subsection (c) of this section, or

(2) any exclusion is revoked under subsection (e) of this section,

the Office shall, within 30 days after the action, transmit to the Congress written notice of the exclusion or revocation.

(Added Pub. L. 95-454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1155.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(2), is set out under section 5332 of this title.

Level IV or V of the Executive Schedule, referred to in subsec. (a)(2), are set out in sections 5315 and 5316 of this title.

Section 201 of the Crime Control Act of 1976 (5 U.S.C. 5108 note; 90 Stat. 2425), referred to in subsec. (a)(2), means section 201 of Pub. L. 94-503, title II, Oct. 15, 1976, 90 Stat. 2425, which is classified as a note under section 509 of Title 28, Judiciary and Judicial Procedure.

The date of the enactment of the Civil Service Reform Act of 1978, referred to in subsec. (b)(3), is the date of the enactment of Pub. L. 95-454, which was approved Oct. 13, 1978.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2101a, 3104, 3133, 3135, 3372, 3391, 3591, 4311, 4507, 5311, 5381 of this title.

§ 3133. Authorization of positions; authority for appointment

(a) During each even-numbered calendar year, each agency shall—

(1) examine its needs for Senior Executive Service positions for each of the 2 fiscal years beginning after such calendar year; and

(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

(b) Each agency request submitted under subsection (a) of this section shall—

(1) be based on the anticipated type and extent of program activities and budget requests of the agency for each of the 2 fiscal years involved, and such other factors as may be prescribed from time to time by the Office; and

(2) identify, by position title, positions which are proposed to be designated as or removed from designation as career reserved positions, and set forth justifications for such proposed actions.

(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (a) of this section, a specific number of Senior Executive Service positions for each agency.

(d)(1) The Office of Personnel Management may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any agency. Each agency request under this paragraph shall be submitted in such form, and shall be based on such factors, as the Office shall prescribe.

(2) The total number of positions in the Senior Executive Service may not at any time during any fiscal year exceed 105 percent of the total number of positions authorized under subsection (c) of this section for such fiscal year.

(e)(1) Not later than July 1, 1979, and from time to time thereafter as the Director of the Office of Personnel Management finds appropriate, the Director shall establish, by rule issued in accordance with section 1103(b) of this title, the number of positions out of the total number of positions in the Senior Executive Service, as authorized by this section or section 413 of the Civil Service Reform Act of 1978, which are to be career reserved positions. Except as provided in paragraph (2) of this subsection, the number of positions required by this subsection to be career reserved positions shall not be less than the number of the positions then in the Senior Executive Service which before the date of such Act, were authorized to be filled only through competitive civil service examination.

(2) The Director may, by rule, designate a number of career reserved positions which is less than the number required by paragraph (1) of this subsection only if the Director determines such lesser number necessary in order to designate as general positions one or more positions (other than positions described in section 3132(b)(3) of this title) which—

(A) involve policymaking responsibilities which require the advocacy or management of programs of the President and support of controversial aspects of such programs;

(B) involve significant participation in the major political policies of the President; or

(C) require the senior executives in the positions to serve as personal assistants of, or advisers to, Presidential appointees.

The Director shall provide a full explanation for his determination in each case.

(Added Pub. L. 95-454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1158.)

REFERENCES IN TEXT

Section 413 of the Civil Service Reform Act of 1978, referred to in subsec. (e)(1), is set out as a note below.

The date of such Act, referred to in subsec. (e)(1), probably means Oct. 13, 1978, the date of the enactment of the Civil Service Reform Act of 1978.

CONVERSION TO SENIOR EXECUTIVE SERVICE

Section 413 of Pub. L. 95-454 provided that:

"(a) For the purpose of this section, 'agency', 'Senior Executive Service position', 'career appointee', 'career reserved position', 'limited term appointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3132(a) of title 5, United States Code (as added by this title) and 'Senior Executive Service' has the meaning set forth in section 2101a of such title 5 (as added by this title).

"(b)(1) Under the guidance of the Office of Personnel Management, each agency shall—

"(A) designate those positions which it considers should be Senior Executive Service positions and designate which of those positions it considers should be career reserved positions; and

"(B) submit to the Office a written request for—

"(i) a specific number of Senior Executive Service positions; and

"(ii) authority to employ a specific number of noncareer appointees.

"(2) The Office of Personnel Management shall review the designations and requests of each agency under paragraph (1) of this subsection, and shall establish interim authorizations in accordance with sections 3133 and 3134 of title 5, United States Code (as added by this Act), and shall publish the titles of the authorized positions in the Federal Register.

"(c)(1) Each employee serving in a position at the time it is designated as a Senior Executive Service position under subsection (b) of this section shall elect to—

"(A) decline conversion and be appointed to a position under such employee's current type of appointment and pay system, retaining the grade, seniority, and other rights and benefits associated with such type of appointment and pay system; or

"(B) accept conversion and be appointed to a Senior Executive Service position in accordance with the provisions of subsections (d), (e), (f), (g), and (h) of this section.

The appointment of an employee in an agency because of an election under subparagraph (A) of this paragraph shall not result in the separation or reduction in grade of any other employee in such agency.

"(2) Any employee in a position which has been designated a Senior Executive Service position under this section shall be notified in writing of such designation, the election required under paragraph (1) of this sub-

section, and the provisions of subsections (d), (e), (f), (g), and (h) of this section. The employee shall be given 90 days from the date of such notification to make the election under paragraph (1) of this subsection.

"(d) Each employee who has elected to accept conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under—

"(1) a career or career-conditional appointment; or

"(2) a similar type of appointment in an excepted service position, as determined by the Office;

in a position which is designated as a Senior Executive Service position shall be appointed as a career appointee to such Senior Executive Service position without regard to section 3393(b)–(e) of title 5, United States Code (as added by this title).

"(e) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under an excepted appointment in a position which is not designated a career reserved position in the Senior Executive Service, but is—

"(1) a position in Schedule C of subpart C of part 213 of title 5, Code of Federal Regulations;

"(2) a position filled by noncareer executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations; or

"(3) a position in the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code [section 5311 et seq. of this title], other than a career Executive Schedule position;

shall be appointed as a noncareer appointee to a Senior Executive Service position.

"(f) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a career reserved position under subsection (b) of this section shall be appointed as a noncareer appointee to an appropriate general position in the Senior Executive Service or shall be separated.

"(g) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a Senior Executive Service position and who has reinstatement eligibility to a position in the competitive service, may, on request to the Office, be appointed as a career appointee to a Senior Executive Service position. The name of, and basis for reinstatement eligibility for, each employee appointed as a career appointee under this subsection shall be published in the Federal Register.

"(h) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under a limited executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations, shall—

"(1) be appointed as a limited term appointee to a Senior Executive Service position if the position then held by such employee will terminate within 3 years of the date of such appointment;

"(2) be appointed as a noncareer appointee to a Senior Executive Service position if the position then held by such employee is designated as a general position; or

"(3) be appointed as a noncareer appointee to a general position if the position then held by such employee is designated as a career reserved position.

"(i) The rate of basic pay for any employee appointed to a Senior Executive Service position under this section shall be greater than or equal to the rate of basic pay payable for the position held by such employee at the time of such appointment.

"(j) Any employee who is aggrieved by any action by any agency under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of title 5, United States Code (as added by this title). An agency shall take any corrective action which the Board orders in its decision on an appeal under this subsection.

"(k) The Office shall prescribe regulations to carry out the purpose of this section."

Section 415(a)(2) of Pub. L. 95–454 provided that section 413 is effective Oct. 13, 1978.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3392, 5108 of this title.

§ 3134. Limitations on noncareer and limited appointments

(a) During each calendar year, each agency shall—

(1) examine its needs for employment of noncareer appointees for the fiscal year beginning in the following year; and

(2) submit to the Office of Personnel Management, in accordance with regulations prescribed by the Office, a written request for authority to employ a specific number of noncareer appointees for such fiscal year.

(b) The number of noncareer appointees in each agency shall be determined annually by the Office on the basis of demonstrated need of the agency. The total number of noncareer appointees in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

(c) Subject to the 10 percent limitation of subsection (b) of this section, the Office may adjust the number of noncareer positions authorized for any agency under subsection (b) of this section if emergency needs arise that were not anticipated when the original authorizations were made.

(d) The number of Senior Executive Service positions in any agency which are filled by noncareer appointees may not at any time exceed the greater of—

(1) 25 percent of the total number of Senior Executive Service positions in the agency; or

(2) the number of positions in the agency which were filled on the date of the enactment of the Civil Service Reform Act of 1978 by—

(A) noncareer executive assignments under subpart F of part 305 of title 5, Code of Federal Regulations, as in effect on such date, or

(B) appointments to level IV or V of the Executive Schedule which were not required on such date to be made by and with the advice and consent of the Senate.

This subsection shall not apply in the case of any agency having fewer than 4 Senior Executive Service positions.

(e) The total number of limited emergency appointees and limited term appointees in all agencies may not exceed 5 percent of the total number of Senior Executive Service positions in all agencies.

(Added Pub. L. 95–454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1159.)

REFERENCES IN TEXT

The date of enactment of the Civil Service Reform Act of 1978, referred to in subsec. (d)(2), is the date of

enactment of Pub. L. 95-454, which was approved Oct. 13, 1978.

Level IV or V of the Executive Schedule, referred to in subsec. (d)(2)(B), are set out in sections 5315 and 5316 of this title.

§ 3135. Biennial report

(a) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted by the President to the Congress during each odd-numbered calendar year, a report on the Senior Executive Service. The report shall include—

(1) the number of Senior Executive Service positions authorized for the then current fiscal year, in the aggregate and by agency, and the projected number of Senior Executive Service positions to be authorized for the next two fiscal years, in the aggregate and by agency;

(2) the authorized number of career appointees and noncareer appointees, in the aggregate and by agency, for the then current fiscal year;

(3) the position titles and descriptions of Senior Executive Service positions designated for the then current fiscal year;

(4) a description of each exclusion in effect under section 3132(c) of this title during the preceding fiscal year;

(5) the number of career appointees, limited term appointees, limited emergency appointees, and noncareer appointees, in the aggregate and by agency, employed during the preceding fiscal year;

(6) the percentage of senior executives at each pay rate, in the aggregate and by agency, employed at the end of the preceding fiscal year;

(7) the distribution and amount of performance awards, in the aggregate and by agency, paid during the preceding fiscal year;

(8) the estimated number of career reserved positions which, during the two fiscal years following the then current fiscal year, will become general positions and the estimated number of general positions which during such two fiscal years, will become career reserved positions; and

(9) such other information regarding the Senior Executive Service as the Office considers appropriate.

(b) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted to the Congress during each even-numbered calendar year, an interim report showing changes in matters required to be reported under subsection (a) of this section.

(Added Pub. L. 95-454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1159.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4314 of this title.

§ 3136. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95-454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1160.)

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

Sec.
[3306. Repealed.]
[3319. Repealed.]
3321. Competitive service; probationary period.
[3322. Repealed.]
3327. Civil service employment information.

SUBCHAPTER III—DETAILS

3344. Details; administrative law judges.

SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

3391. Definitions.
3392. General appointment provisions.
3393. Career appointments.
3394. Noncareer and limited appointments.
3395. Reassignment and transfer within the Senior Executive Service.
3396. Development for and within the Senior Executive Service.
3397. Regulations.

AMENDMENTS

1978—Pub. L. 95-454, title III, §§ 303(b), 307(h)(2), 309(b), title IV, § 403(b), title IX, § 906(c)(4), Oct. 13, 1978, 92 Stat. 1146, 1149, 1152, 1165, 1227, substituted in item 3321 "probationary period" for "probation; period of", struck out item 3319 "Competitive service; selection; members of family restriction", added items 3327 and 3391 to 3397, and struck out former items 3391 to 3398.

Pub. L. 95-437, § 3(b), Oct. 10, 1978, 92 Stat. 1058, added heading for subchapter VII and items 3391 to 3398.

Pub. L. 95-256, § 5(b)(2), Apr. 6, 1978, 92 Stat. 191, struck out item 3322 "Competitive service; temporary appointments after age 70".

Pub. L. 95-251, § 2(c)(3), Mar. 27, 1978, 92 Stat. 184, substituted "administrative law judges" for "hearing examiners" in item 3344.

Pub. L. 95-228, § 2(a), Feb. 10, 1978, 92 Stat. 25, struck out item 3306 "Competitive service; departmental service; apportionment".

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 42 sections 7138, 7231.

§ 3301. Civil service; generally

EX. ORD. NO. 8743. EXTENDING THE CLASSIFIED CIVIL SERVICE

Ex. Ord. No. 8743, Apr. 23, 1941, as amended by Ex. Ord. No. 9230, Aug. 20, 1942; Ex. Ord. No. 9678, Jan. 14, 1946, and Ex. Ord. No. 9712, Apr. 13, 1946; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[*See main edition for text of first par. and sec. 1*]

SECTION 2. Section 1 of this order shall become effective on January 1, 1942, except that as to positions affected thereby which are vacant at any time after June 30, 1941, and before January 1, 1942, it shall become effective when the vacancies first exist during such period, and appointments to such vacant posi-

tions shall be made in accordance with the Civil Service Rules as amended by section 3 of this order, unless prior express permission is given by the Office of Personnel Management for appointment without regard thereto.

SECTION 3. (a) Upon consideration of the report of the Committee on Civil Service Improvement (House Document No. 118, 77th Congress) appointed by Executive Order No. 8044 of January 31, 1939, it is hereby found and determined that the regulations and procedures hereinafter prescribed in this section with respect to attorney positions in the classified civil service are required by the conditions of good administration.

(b) There is hereby created in the Office of Personnel Management (hereinafter referred to as the Office) a board to be known as the Board of Legal Examiners (hereinafter referred to as the Board). The Board shall consist of the Solicitor General of the United States and the chief law officer of the Office of Personnel Management, as members *ex officio*, and nine members to be appointed by the President, four of whom shall be attorneys chosen from the chief officers of the Executive departments, agencies or corporate instrumentalities of the Government, two from the law-teaching profession, and three from attorneys engaged in private practice. The President shall designate the chairman of the Board. Five members shall constitute a quorum, and the Board may transact business notwithstanding vacancies thereon. Members of the Board shall receive no salary as such, but shall be entitled to necessary expenses incurred in the performance of their duties hereunder.

[*See main edition for text of* (c)]

(d) The Board, in consultation with the Office, shall determine the regulations and procedures under this section governing the recruitment and examination of applicants for attorney positions, and the selection, appointment, promotion and transfer of attorneys, in the classified service.

(e) The Office shall in the manner determined by the Board establish a register or registers for attorney positions in the classified service and such positions shall thereafter be filled from such registers as are designated by the Board. Unless otherwise determined by the Board, any register so established shall not be in effect for a period longer than one year from the date of its establishment. Upon request of the Board, the Office shall appoint regional or local boards of examiners composed of persons approved by the Board, within or without the Federal service, to interview and examine applicants as the Board shall direct.

[*See main edition for text of* (f) *and* (g)]

(h) So far as practicable and consistent with good administration, the eligibles on any register for attorney positions and appointments for such register shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained in the last preceding census. The Office shall certify to the appointing officer for each vacancy all the eligibles on the appropriate register except those whose appointment would, in the determination of the Board, be inconsistent with the apportionment policy herein prescribed. The appointing officer shall make selections for any vacancy or vacancies in attorney positions from the register so certified, with sole reference to merit and fitness.

[*See main edition for text of* (i)]

(j) The incumbent of any attorney position covered into the classified service by section 1 of this order may acquire a classified civil-service status in accordance with the provisions of Section 2(a) of the act of November 26, 1940 (54 Stat. 1211) or, in the discretion of the Board and when applicable, Section 6, of Civil Service Rule II: *Provided*, That the noncompetitive examination required thereunder shall be prescribed by the Office with the approval of the Board.

(k) The Office with the approval of the Board shall appoint a competent person to act as Executive Secretary to the Board; and the Office shall furnish such further professionals, clerical, stenographic, and other assistants as may be necessary to carry out the provisions of this section.

[*See main edition for text of* (l) *and sec. 3*]

SECTION 4. The noncompetitive examinations prescribed pursuant to sections 3 and 6 of this order and section 2(a) of the said act of November 26, 1940, shall, among other things, require any person taking such examination to meet such reasonable standards of physical fitness and personal suitability as the Office of Personnel Management may prescribe.

[*See main edition for text of sec. 5*]

SECTION 6. (a) Any person who, in order to perform active service with the military or naval forces of the United States, has left a position (other than a temporary position) which is covered into the classified civil service under section 1 of this order, shall be reinstated in such position or to a position of like seniority, status, and pay in the same department or agency, and may, upon reinstatement, acquire a classified civil-service status: *Provided*, (1) that he has been honorably discharged from the military or naval service, (2) that he makes application for reinstatement within 90 days after termination of his service with the armed forces or of hospitalization continuing after discharge for a period of not more than one year, and (3) that he qualifies in such suitable noncompetitive examination as the Office may prescribe.

(b) Any person who, in order to perform active service with the military or naval forces of the United States, has left a position in any department or agency (other than a temporary position) which is covered into the classified civil service under section 1 of this order, may, upon his applications and upon the request of the head of the same or any other department or agency, be reinstated in any position for which the Office finds he is qualified, and upon reinstatement shall acquire a classified civil-service status: *Provided*, (1) that he has been honorably discharged from the military or naval service, and (2) that he qualifies in such suitable noncompetitive examination as the Office may prescribe.

[*See main edition for text of sec. 7*]

EX. ORD. NO. 10577. CIVIL SERVICE RULES

Ex. Ord. No. 10577, Nov. 22, 1954, 19 F.R. 7521, eff. Jan. 23, 1955, as amended by Ex. Ord. No. 10641, Oct. 26, 1955, 20 F.R. 8137; Ex. Ord. No. 10675, Aug. 21, 1956, 21 F.R. 6327 Jan. 23, 1956; Ex. Ord. No. 10745, Dec. 12, 1957, 22 F.R. 10025; Ex. Ord. No. 10869, Mar. 9, 1960, 25 F.R. 2073; Ex. Ord. No. 11315, Nov. 17, 1966, 31 F.R. 14729; Ex. Ord. No. 11839, Feb. 15, 1975, 40 F.R. 7351; Ex. Ord. No. 11856, May 7, 1975, 40 F.R. 20259; Ex. Ord. No. 11887, Nov. 4, 1975, 40 F.R. 51411; Ex. Ord. No. 11935; Sept. 2, 1976, 41 F.R. 37301; Ex. Ord. No. 12021, Nov. 30, 1977, 42 F.R. 61237; Ex. Ord. No. 12043, Mar. 7, 1978, 43 F.R. 9773; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

PART I—CIVIL SERVICE RULES

SECTION 101. The Civil Service Rules are hereby amended to read as follows:

RULE I—COVERAGE AND DEFINITIONS

* * * * *

§ 1.2. EXTENT OF THE COMPETITIVE SERVICE

The competitive service shall include: (a) All civilian positions in the executive branch of the Government

unless specifically excepted therefrom by or pursuant to statute or by the Office of Personnel Management (hereafter referred to in these Rules as the Office) under section 6.1 of Rule VI; and (b) all positions in the legislative and judicial branches of the Federal Government and in the Government of the District of Columbia which are specifically made subject to the civil-service laws by statute. The Office is authorized and directed to determine finally whether a position is in the competitive service.

* * * * *

§ 1.4. Extent of the Excepted Service

(a) The excepted service shall include all civilian positions in the executive branch of the Government which are specifically excepted from the requirements of the Civil Service Act or from the competitive service by or pursuant to statute or by the Office under section 6.1 of Rule VI.

* * * * *

Rule II—Appointment Through the Competitive System

§ 2.1. Competitive Examinations and Eligible Registers

(a) The Office shall be responsible for open competitive examinations for admission to the competitive service which will fairly test the relative capacity and fitness of the persons examined for the position to be filled. The Office is authorized to establish standards with respect to citizenship, age, education, training and experience, suitability, and physical and mental fitness, and for residence or other requirements which applicants must meet to be admitted to or rated in examinations.

(b) In addition to the names of persons who qualify in competitive examinations, the names of persons who have lost eligibility on a career or career-conditional register because of service in the armed forces, and the names of persons who lost opportunity for certification or who have served under career or career-conditional appointment when the Office determines that they should be given certification, may also be entered at such places on appropriate registers and under such conditions as the Office may prescribe.

(c) Whenever the Office of Personnel Management (1) is unable to certify a sufficient number of names to permit the appointing officer to consider three eligibles for appointment to a fourth-class postmaster position in accordance with the regular procedure, or (2) finds that a particular rate of compensation for fourth-class postmaster positions is too low to warrant regular competitive examinations for such positions, it may authorize appointment to any such position or positions in accordance with such procedure as may be prescribed by the Office. Persons appointed under this subsection may acquire competitive status subject to satisfactory completion of a probationary period prescribed by the Office.

§ 2.2. Appointments

(a) The Office shall establish and administer a career-conditional appointment system for positions subject to competitive examination which will permit adjustment of the career service to necessary fluctuations in Federal employment, and provide an equitable and orderly system for stabilizing the Federal work force. A competitive status shall be acquired by a career-conditional appointee upon satisfactory completion of a probationary period, but the appointee shall have career-conditional tenure for a period of service to be prescribed by regulation of the Office. When an employee has completed the required period of service his appointment shall be converted to a career appointment without time limitation: *Provided*, That his career-conditional appointment shall not be converted to a career appointment if the limitation on the number of permanent employees in the Federal civil service established under subsection (b) of this section would be exceeded thereby. Persons selected from competitive civil service registers for other than temporary appointment shall be given career-conditional appointments: *Provided*, That career appointments shall be given to the following classes of eligibles: (1) Persons whose appointments are required by statute to be made on a permanent basis; (2) employees serving under career appointments at the time of selections from such registers; (3) former employees who have eligibility for career appointments upon reinstatement; and (4) to the extent permitted by law, persons appointed to positions in the field service of the Post Office Department for which salary rates are fixed by the act of July 6, 1945, 59 Stat. 435 [chapter 23 of title 39], as heretofore or hereafter amended and supplemented.

(b) Under the career-conditional appointment system there shall be a limit on the number of permanent employees in the Federal civil service which shall be the ceiling established by section 1310 of the Supplemental Appropriation Act, 1952 (65 Stat. 757), as amended [set out as a note under section 3101 of this title]. In the event section 1310, supra, is repealed, the Office is authorized to fix such limitation on the number of permanent employees in the Federal civil service as it finds necessary to meet the needs of the service.

(c) The Office may determine the types, duration, and conditions of indefinite and temporary appointments, and may prescribe the method for replacing persons holding such appointments.

§ 2.3. Apportionment

Subject to such modifications as the Office finds to be necessary in the interest of good administration, appointments to positions in agencies' headquarters offices which are located within the metropolitan area of Washington, D.C., shall be made so as to maintain the apportionment of appointments among the several States, Territories, and the District of Columbia upon the basis of population.

§ 2.4. Probationary Period

Persons selected from registers of eligibles for career or career-conditional appointment and employees promoted, transferred, or otherwise assigned, for the first time, to supervisory or managerial positions shall be required to serve a probationary period under terms and conditions prescribed by the Office.

Rule III—Noncompetitive Acquisition of Status

§ 3.1. Classes of Persons Who May Noncompetitively Acquire Status

(a) Upon recommendation by the agency concerned, and subject to such noncompetitive examination, time limits, or other requirements as the Office may prescribe, the following classes of persons may acquire a competitive status without competitive examination:

* * * * *

(2) A disabled veteran who, in a manner satisfactory to the Office, has completed a course of training in the executive branch of the Government prescribed by the Administrator of Veterans' Affairs in accordance with the act of March 24, 1943, 57 Stat. 43.

* * * *

§ 3.2. Appointments Without Competitive Examination in Rare Cases

Subject to receipt of satisfactory evidence of the qualifications of the person to be appointed, the Office may authorize an appointment in the competitive service without competitive examination when-

ever it finds that the duties or compensation of the position are such, or that qualified persons are so rare, that, in the interest of good civil-service administration, the position cannot be filled through open competitive examination. Any person heretofore or hereafter appointed under this section shall acquire a competitive status upon completion of at least one year of satisfactory service and compliance with such requirements as the Office may prescribe. Detailed statements of the reasons for the noncompetitive appointments made under this section shall be published in the Office's annual reports.

* * * * *

RULE IV—PROHIBITED PRACTICES

* * * * *

§ 4.3. PROHIBITION AGAINST SECURING WITHDRAWAL FROM COMPETITION

No person shall influence another person to withdraw from competition for any position in the competitive service for the purpose of either improving or injuring the prospects of any applicant for appointment.

RULE V—REGULATIONS, INVESTIGATIONS, EVALUATION, AND ENFORCEMENT

§ 5.1. CIVIL SERVICE REGULATIONS

The Director, Office of Personnel Management, shall promulgate and enforce regulations necessary to carry out the provisions of the Civil Service Act and the Veterans' Preference Act, as reenacted in Title 5, United States Code [now covered by this chapter and chapter 35 of this title], the Civil Service Rules, and all other statutes and Executive orders imposing responsibilities on the Office. The Director is authorized, whenever there are practical difficulties and unnecessary hardships in complying with the strict letter of the regulation, to grant a variation from the strict letter of the regulation if such a variation is within the spirit of the regulations, and the efficiency of the Government and the integrity of the competitive service are protected and promoted. Whenever a variation is granted the Director shall note the official record to show: (1) the particular practical difficulty or hardship involved, (2) what is permitted in place of what is required by regulation, (3) the circumstances which protect or promote the efficiency of the Government and the integrity of the competitive service, and (4) a statement limiting the application of the variation to the continuation of the conditions which gave rise to it. Like variations shall be granted whenever like conditions exist. All such decisions and information concerning variations noted in the official record shall be published promptly in a Federal Personnel Manual, Letter or Bulletin and in the Director's next annual report.

§ 5.2. INVESTIGATION AND EVALUATIONS

The Director may secure effective implementation of the civil service laws, rules, and regulations, and all Executive orders imposing responsibilities on the Office by:

(a) Investigating the qualifications and suitability of applicants for positions in the competitive service. The Director may require appointments to be made subject to investigation to enable the Director to determine, after appointment, that the requirements of law or the civil service rules and regulations have been met.

(b) Evaluating the effectiveness of: (1) personnel policies, programs, and operations of Executive and other Federal agencies subject to the jurisdiction of the Office, including their effectiveness with regard to merit selection and employee development; (2) agency compliance with and enforcement of applicable laws, rules, regulations and office directives; and (3) agency personnel management evaluation systems.

(c) Investigating, or directing an agency to investigate and report on, apparent violations of applicable laws, rules, regulations, or directives requiring corrective action, found in the course of an evaluation.

(d) Requiring agencies to report, in a manner and at times as the Director may prescribe, personnel information the Director requests relating to civilian employees in the Executive branch of the Government, as defined by Section 311 of the Civil Service Reform Act of 1978 [set out as a note under section 3101 of this title], including positions and officers and employees in the competitive, excepted and Senior Executive services, whether permanent, career-conditional, temporary or emergency.

§ 5.3. ENFORCEMENT

(a) The Director is authorized to ensure enforcement of the civil service laws, rules, and regulations, and all applicable Executive orders, by:

(1) Instructing an agency to separate or take other action against an employee serving an appointment subject to investigation when the Director finds that the employee is disqualified for Federal employment. Where the employee or the agency appeals the Director's finding that a separation or other action is necessary, the Director may instruct the agency as to whether or not the employee should remain on duty and continue to receive pay pending adjudication of the appeal: *Provided*, That when an agency separates or takes other action against an employee pursuant to the Director's instructions, and the Director, on the basis of new evidence, subsequently reverses the initial decision as to the employee's qualifications and suitability, the agency shall, upon request of the Director, restore the employee to duty or otherwise reverse any action taken.

(2) Reporting the results of evaluation or investigations to the head of the agency concerned with instructions for any corrective action necessary, including cancellation of personnel actions where appropriate. The Director's findings resulting from evaluations or investigations are binding unless changed as a result of agency evidence and arguments against them. If, during the course of any evaluation or investigation under this Section, the Director finds evidence of matters which come within the investigative and prosecutorial jurisdiction of the Special Counsel of the Merit Systems Protection Board, the Director shall refer this evidence to the Special Counsel for appropriate disposition.

(b) Whenever the Director issues specific instructions as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the head of the agency concerned shall comply with the Director's instructions.

(c) If the agency head fails to comply with the specific instructions of the Director as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the Director may certify to the Comptroller General of the United States the agency's failure to act together with such additional information as the Comptroller General may require, and shall furnish a copy of such certification to the head of the agency concerned. The individual with respect to whom such separation or other corrective action was instructed shall be entitled thereafter to no pay or only to such pay as appropriate to effectuate the Director's instructions.

§ 5.4. INFORMATION AND TESTIMONY

When required by the Office, the Merit Systems Protection Board, or the Special Counsel of the Merit Systems Protection Board, or by authorized representatives of these bodies, agencies shall make available to them, or to their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws, rules, and regulations, and records pertinent to these matters. All such employees, and all applicants or eligibles for positions covered by these rules, shall give to the Office, the Merit Systems Protection Board, the Special Counsel, or to

their authorized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section.

RULE VI—EXCEPTIONS FROM THE COMPETITIVE SERVICE

§ 6.1. AUTHORITY TO EXCEPT POSITIONS FROM THE COMPETITIVE SERVICE

(a) The Office may except positions from the competitive service when it determines that appointments thereto through competitive examination are not practicable. These positions shall be listed in the Office's annual report for the fiscal year in which the exceptions are made.

(b) The Office shall decide whether the duties of any particular position are such that it may be filled as an excepted position under the appropriate schedule.

(c) Notice of the Office's decision granting authority to make appointments to an excepted position under the appropriate schedule shall be published in the FEDERAL REGISTER.

§ 6.2. SCHEDULES OF EXCEPTED POSITIONS

The Office shall list positions that it excepts from the competitive service in Schedules A, B, and C, which schedules shall constitute parts of this Rule, as follows:

SCHEDULE A

Positions other than those of a confidential or policy-determining character for which it is not practicable to examine shall be listed in Schedule A.

SCHEDULE B

Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination shall be listed in Schedule B. Appointments to these positions shall be subject to such noncompetitive examinations as may be prescribed by the Office.

SCHEDULE C

Positions of a confidential or policy-determining character shall be listed in Schedule C.

§ 6.3. METHOD OF FILLING EXCEPTED POSITIONS AND STATUS OF INCUMBENTS

(a) The head of an agency may fill excepted positions by the appointment of persons without civil service eligibility or competitive status and such persons shall not acquire competitive status by reason of such appointment: *Provided*, That the Office, in its discretion, may by regulation prescribe conditions under which excepted positions may be filled in the same manner as competitive positions are filled and conditions under which persons so appointed may acquire a competitive status in accordance with the Civil Service Rules and Regulations.

* * * * *

§ 6.5. ASSIGNMENT OF EXCEPTED EMPLOYEES

No person who is serving under an excepted appointment shall be assigned to the work of a position in the competitive service without prior approval of the Office.

§ 6.6. REVOCATION OF EXCEPTIONS

The Office may remove any position from or may revoke in whole or in part any provision of Schedule A, B, or C. Notice of the Office's decision making these changes shall be published in the FEDERAL REGISTER.

§ 6.7. MOVEMENT OF PERSONS BETWEEN THE CIVIL-SERVICE SYSTEM AND OTHER MERIT SYSTEMS

Whenever the Office and any Federal agency having an established merit system determine it to be in the interest of good administration and consistent with the intent of the civil-service laws and any other applicable laws, they may enter into an agreement prescribing conditions under which persons may be moved from one system to the other and defining the status and tenure that the persons affected shall acquire upon such movement.

§ 6.8. SPECIFIED EXCEPTIONS

(a) Positions in the Department of the Interior and in the Department of Commerce whose incumbents serve as the principal representative of the Secretary in their respective regions shall be listed in Schedule C for grades not exceeding grade GS-15 of the General Schedule, and shall be designated Noncareer Executive Assignments for positions graded higher than GS-15. Incumbents of these positions who are, on February 15, 1975, in the competitive service shall not be affected by the foregoing provisions of this Section.

(b) Positions in the Community Services Administration and ACTION whose incumbents serve as regional director or regional administrator shall be listed in Schedule C for grades not exceeding GS-15 of the General Schedule and shall be designated Noncareer Executive Assignments for positions graded higher than GS-15. Incumbents of these positions who are, on November 29, 1977, in the competitive service shall not be affected by the foregoing provisions of this subsection.

RULE VII—GENERAL PROVISIONS

* * * * *

§ 7.2. PERSONNEL REPORTS

Each agency shall report to the Office, in such manner and at such times as the Office may prescribe, such personnel information as it may request relating to positions and officers and employees in the competitive service and in the excepted service, whether permanent or career, career-conditional, indefinite, temporary, emergency, or subject to contract.

§ 7.3. REEMPLOYMENT RIGHTS

The Office, whenever it determines it to be necessary, shall prescribe regulations governing the release of employees (both within the competitive service and the excepted service) by any agency in the executive branch of the Government for employment in any other agency, and governing the establishment, granting, and exercise of rights to reemployment in the agencies from which employees are released.

§ 7.4. CITIZENSHIP

(a) No person shall be admitted to competitive examination unless such person is a citizen or national of the United States.

(b) No person shall be given any appointment in the competitive service unless such person is a citizen or national of the United States.

(c) The Office may, as an exception to this rule and to the extent permitted by law, authorize the appointment of aliens to positions in the competitive service when necessary to promote the efficiency of the service in specific cases or for temporary appointments.

RULE VIII—APPOINTMENTS TO OVERSEAS POSITIONS

§ 8.1. ADDITIONAL AUTHORITY OF THE OFFICE

In addition to authorizing the recruitment and appointment of persons to overseas positions under regulations issued under the preceding Rules, the Office

may, by the regulations prescribed by it, authorize the recruitment and appointment of persons to such positions as provided in section 2 of this Rule. As used in this Rule, "overseas positions" means positions in foreign countries and in other areas beyond the continental limits of the United States, except as provided in section 8.4 hereof.

§ 8.2. APPOINTMENT OF UNITED STATES CITIZENS

United States citizens may be recruited overseas for appointment to overseas positions in the competitive service without regard to the competitive requirements of the Civil Service Act. Persons so recruited who meet the qualification standards and other requirements of the Office for overseas positions may be given appointments to be known as "overseas limited appointments." Such appointments shall be of temporary or indefinite duration, and shall not confer the right to acquire a competitive status. The Office may authorize overseas limited appointments for United States citizens recruited within the continental limits of the United States whenever it determines that it is not feasible to appoint from a civil-service register. Persons serving under appointments made pursuant to this section are hereby excluded from the operation of the Civil Service Retirement Act of May 29, 1930, as amended [now covered by section 8301 et seq. of this title], unless eligible for retirement benefits by continuity of service or otherwise.

* * * * *

RULE IX—EXECUTIVE ASSIGNMENT SYSTEM FOR POSITIONS IN GRADES GS–16, 17, AND 18 OF THE GENERAL SCHEDULE

In General

* * * * *

SEC. 9.2 FILLING POSITIONS COVERED BY THIS RULE. An appointing officer shall fill a position covered by this Rule of Career Executive Assignment, unless the Office authorizes a Limited Executive Assignment under section 9.6 of this Rule or a Noncareer Executive Assignment under section 9.20 of this Rule.

Career Executive Assignments

SEC. 9.3 QUALIFICATIONS REQUIRED FOR A CAREER EXECUTIVE ASSIGNMENT. After appropriate consultation with the agency concerned the Office shall establish specific qualification standards for assignment to a Career Executive Assignment.

SEC. 9.4 RECRUITMENT FOR CAREER EXECUTIVE ASSIGNMENTS. (a) Before selecting any person for a Career Executive Assignment the appointing officer shall first consider fully employees under his agency's merit promotion program and available employees of other Federal agencies qualified pursuant to paragraph (b) of this section. Only after this consideration may the appointing officer elect to recruit applicants from outside the Federal service pursuant to paragraph (b) of this section.

(b) The Office shall be responsible for the establishment of special facilities, including special boards and panels, to recruit well-qualified persons for Career Executive Assignments in the Federal service from among employees holding Career Executive Assignments, other eligible employees, and persons outside the Federal service. The appointing officer shall use these special facilities, including special boards and panels, to recruit applicants from outside the Federal service.

The procedures in this section do not apply when the Office authorizes the movement of an incumbent Career Executive to a Career Executive Assignment at the same or lower grade.

SEC. 9.5 CAREER EXECUTIVE ASSIGNMENTS, SELECTION AND ASSIGNMENT. (a) An appointing officer shall select a person for a Career Executive Assignment solely on the basis of merit and fitness. He shall not permit or consider any political test, qualification, clearance, or recommendation, and shall not discriminate on the basis of race, religion, national origin, sex, age, or physical disability.

(b) The appointing officer may make a Career Executive Assignment only after the Office has finally approved the qualifications and suitability of the person selected.

SEC. 9.6 AUTHORIZATION OF LIMITED EXECUTIVE ASSIGNMENTS. (a) The Office may authorize agencies to fill a position covered by this Rule by a Limited Executive Assignment when:

(1) the position is expected to be of limited duration; or

(2) the agency concerned establishes an unusual need for urgent staffing that cannot adequately be met under the procedures required for Career Executive Assignments.

(b) The Office shall specify a time limit within which an agency may use this authority and may revoke this authority at anytime.

(c) The Office shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Limited Executive Assignment.

SEC. 9.7 QUALIFICATIONS REQUIRED FOR A LIMITED EXECUTIVE ASSIGNMENT. After appropriate consultation with the agency concerned the Office shall establish specific qualification standards for assignment to a Limited Executive Assignment.

SEC. 9.8 LIMITED EXECUTIVE ASSIGNMENT; SELECTIONS AND ASSIGNMENT. An appointing officer may make a Limited Executive Assignment only after the Office has finally approved the qualifications of the person selected.

* * * * *

SEC. 9.11 SPECIFIED NONCAREER EXECUTIVE ASSIGNMENTS. (a) The regional director, regional administrator, or the Secretary's principal regional representative positions in the Department of Health, Education, and Welfare, Housing and Urban Development, Transportation and Labor, and those positions in the Environmental Protection Agency and the Small Business Administration shall be designated Noncareer Executive Assignments; and, the Limited Executive Assignments of any incumbents of these positions on February 15, 1975, are converted to Noncareer Executive Assignments. Incumbents of these positions serving in Career Executive Assignments on February 15, 1975, shall not be affected by the foregoing provisions of this Section.

(b) The regional director or regional administrator positions in the Defense Civil Preparedness Agency and the General Services Administration shall be designated as Noncareer Executive Assignments and the Limited Executive Assignments of any incumbents of these positions on November 29, 1977, are converted to Noncareer Executive Assignments. Incumbents of these positions who are, on November 29, 1977, serving in Career Executive Assignments shall not be affected by the foregoing provisions of this subsection.

Noncareer Executive Assignments

SEC. 9.20 EXCEPTION OF POSITIONS TO BE FILLED BY NONCAREER EXECUTIVE ASSIGNMENTS. (a) After consulting the agency concerned, the Office may except a position from the procedures required for making Career Executive Assignments and authorize an agency to fill the position by a Noncareer Executive Assignment when it determines that there is a need for filling the position by a person who will:

* * * * *

(b) In determining the positions to be excepted under paragraph (a) of this section the Office shall:

(1) limit the number of positions excepted to a relatively small proportion of the positions in the agency

in grades 16, 17, and 18, taking into consideration the size of the agency and the nature of its program; and

(2) define the area of the agency's activity in which Noncareer Executive Assignments would be appropriate and specify organizational levels, as distinguished from grade levels, below which Noncareer Executive Assignments would be inappropriate.

(c) The Office shall not except a position which has as its principal responsibility the internal management of an agency, or a position involving long-standing recognized professional duties and responsibilities resting on a body of knowledge essentially politically neutral in nature. However, a position concerned with the direction of a scientific program could be appropriately excepted when it meets the criteria set forth in paragraph (a)(1), (2), or (3) of this section.

(d) The Office shall review periodically the exceptions made under this section and after consulting the agency concerned, shall revoke an exception when the position no longer meets the criteria for exception. Civil Service Rule III, providing for the noncompetitive acquisition of competitive status, shall not apply in such a case.

(e) Notice of the Office's decision to grant or revoke authority to make Noncareer Executive Assignments shall be published in the Federal Register.

(f) The Office shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Noncareer Executive Assignment.

SEC. 9.21 QUALIFICATIONS REQUIRED FOR A NONCAREER EXECUTIVE ASSIGNMENT. After appropriate consultation with the agency concerned the Office shall establish specific qualification standards for assignment to a Noncareer Executive Assignment. In addition, as a qualification for continuance in a Noncareer Executive Assignment, the incumbent must continue to maintain the qualifications and relationships that are required for the particular Noncareer Executive Assignment.

SEC. 9.22 NONCAREER EXECUTIVE ASSIGNMENT; SELECTION AND ASSIGNMENT. An appointing officer may make a Noncareer Executive Assignment only after the Office has finally approved the qualifications of the person selected. He shall inform each person selected of the qualifications required under section 9.21 of this Rule for assignment to and continuance in a Noncareer Executive Assignment.

* * * * *

PART II—SPECIAL PROVISIONS FOR TRANSITION FROM INDEFINITE APPOINTMENT SYSTEM TO CAREER-CONDITIONAL APPOINTMENT SYSTEM

§ 201

(a) Under such conditions as the Office of Personnel Management may prescribe, all employees serving under indefinite appointments in the competitive service on the effective date of this order who were appointed by selection in regular order from appropriate competitive civil-service registers established subsequent to February 4, 1946, shall, as of the effective date of this order, have their appointments converted to career-conditional appointments if they have had less than three years of creditable service, and to career appointments if they have had three or more years of such service since they were appointed: *Provided,* That any such employees who left their positions prior to the effective date of this order to enter the armed forces of the United States and are reemployed in the competitive service after the effective date of this order pursuant to application for employment made within ninety days after honorable discharge, or after hospitalization continuing after discharge for not more than one year, shall have their former indefinite appointments converted to career-conditional or career appointments in accordance with this section: *Provided further,* That employees serving in excepted positions who would meet the conditions for career-conditional or career appointments if they were serving in competitive positions shall be granted competitive status upon completion of a probationary period.

(b) The Office may prescribe the conditions under which employees who are serving under indefinite appointments in the competitive service on the effective date of this order and who were not appointed by selection in regular order from competitive civil-service registers may be examined and have their names entered on existing competitive civil-service registers. When such employees are within reach for appointment from such registers they shall be eligible for career-conditional appointments if, since they were given indefinite appointments, they have had less than three years of creditable service, and for career appointments if they have had three or more years of such service.

* * * * *

(d) The Office shall define "creditable service" and shall prescribe the conditions for completion of the period of creditable service required for career appointment.

* * * * *

§ 202

(a) Notwithstanding the provisions of section 201(a) of this order, and subject to such noncompetitive examination or other requirements as the Office may prescribe, any employee entitled to veteran preference who has a compensable service-connected disability of ten per centum or more may, upon recommendation of the agency concerned, noncompetitively acquire a competitive status subject to completion of a probationary period: *Provided,* That he is serving under an indefinite appointment, a temporary appointment pending establishment of a register, or a temporary appointment for job employment which has been continuous for more than one year: *Provided further,* That recommendation for acquisition of status under this section is made not later than December 31, 1957.

(b) Any employee who is recommended for noncompetitive acquisition of competitive status under section 202(a) hereof and who satisfies the noncompetitive examination and other requirements of the Office shall have the appointment under which he is serving converted to a career appointment if he has completed a probationary period or to a career-conditional appointment if he has not completed a probationary period. The career-conditional appointment of such an employee shall be converted to a career appointment upon completion of probation.

(c) An employee in the field service of the Post Office Department whose salary rate is fixed by the act of July 6, 1945, 59 Stat. 435 [chapter 23 of Title 39], as heretofore or hereafter amended and supplemented, may not be recommended for competitive status under section 202(a) hereof unless he can be appointed to a vacancy in the authorized complement of permanent positions (consisting of regular positions and positions within the authorized quota of substitutes). When such an employee is recommended for noncompetitive acquisition of competitive status and satisfies the noncompetitive examination and other requirements of the Office, his appointment shall be converted to a career appointment subject to satisfactory completion of a probationary period.

§ 203

The career-conditional appointment of any employee entitled to veteran preference who has a compensable service-connected disability of ten per centum or more may be converted to a career appointment: *Provided,* That he received his career-conditional appointment prior to January 1, 1958, and that, not later than December 31, 1958, the agency in which he is employed recommends such conversion and certifies to the Office that he has satisfactorily completed a one-

year probationary period: *Provided further,* That any such employee who is not certified for career appointment under this section shall have his career-conditional appointment converted to a career appointment when he has completed the service requirement for such appointment prescribed under section 2.2(a) of Civil Service Rule II.

§ 204

In order to effectuate the purposes of section 1310 of the Supplemental Appropriations Act, 1952 (65 Stat. 757), as amended [set out as a note under section 3101 of this title], the Office shall, after consultation with the agencies concerned, determine the division of allowable permanent appointments within and between the excepted service and the competitive service.

§ 205

The Office shall issue such regulations and instructions as may be necessary to effectuate the purposes of this part.

PART III

§ 301

The following-described executive orders and parts of executive orders are hereby revoked:

Part II of Executive Order No. 9830 of February 24, 1947, amending the Civil Service Rules: *Provided,* That the positions listed in Schedules A, B, and C as provided for in Civil Service Rule VI of that order, as amended, shall be considered as being listed in Schedules A, B, and C, respectively, as provided for in Civil Service Rule VI of this order, unless and until they are removed therefrom by the Office.

Executive Orders No. 9973 of June 28, 1948, No. 10440 of March 31, 1953, and No. 10463 of June 25, 1953, amending Civil Service Rule VI.

Executive Order No. 10180 of November 13, 1950, establishing special personnel procedures in the interest of national defense.

PART IV

§ 401

This order shall become effective on the first Sunday after the sixtieth day after the date hereof.

EX. ORD. NO. 10880. CONVERSION OF INDEFINITE OR TEMPORARY APPOINTMENT TO CAREER OR CAREER-CONDITIONAL APPOINTMENT

Ex. Ord. No. 10880, June 7, 1960, 25 F.R. 5131, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

* * * * *

SECTION 1. (a) Except as provided by subsection (b) of this section and by section 4 hereof, any employee of the United States Government or of the District of Columbia Government who on the date of this order is serving in a position in the competitive service under an indefinite appointment or a temporary appointment without a definite time limitation may have his appointment converted to a career or career-conditional appointment: *Provided,* That such employee—

* * * * *

(iv) during the period beginning January 23, 1955, and ending on the date of this order, shall have passed a qualifying examination for a position in the competitive service in which he served during such period, or shall meet such noncompetitive examination standards as the Office of Personnel Management shall prescribe with respect to the position held at the time of the agency recommendation for conversion of his appointment; and

(v) shall meet the requirements prescribed by the Office of Personnel Management under section 5 of this order.

* * * * *

SEC. 3. Any person who left a competitive position to enter the armed forces of the United States who would meet the requirements of section 1 except for absence in the armed forces on the date of this order and who is re-employed by an agency in a competitive position within 120 days after discharge from the armed forces under honorable conditions may have his appointment converted if he is recommended by such agency within ninety days after his re-employment and qualifies in such examination as the Office of Personnel Management may prescribe.

* * * * *

SEC. 5. The Office of Personnel Management may prescribe such regulations as may be necessary for carrying out the provisions of this order.

EX. ORD. NO. 11203. CAREER APPOINTMENTS TO CERTAIN QUALIFIED EMPLOYEES OF TREASURY DEPARTMENT

Ex. Ord No. 11203, Mar. 12, 1965; 30 F.R. 3417, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

* * * * *

SECTION 1. Any employee of the Treasury Department serving under an appointment under Schedule B of the Civil Service Rules in a position concerned with the protection of the life and safety of the President, members of his immediate family, or other persons for whom similar protective services are provided by law (which responsibility is hereinafter referred to as the protective function) may have his appointment converted to a career appointment if:

* * * * *

(3) he shall have passed a competitive examination appropriate for the position he is occupying or meets noncompetitive examination standards the Office of Personnel Management prescribes for his position; and

(4) he meets all other requirements prescribed by the Office pursuant to Section 5 of this Order.

* * * * *

SEC. 5. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purposes of this Order.

EX. ORD. NO. 11219. APPOINTMENT IN COMPETITIVE SERVICE OF FOREIGN SERVICE OFFICERS AND EMPLOYEES

Ex. Ord. No. 11219, May 6, 1965, 30 F.R. 6381, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

* * * * *

SECTION 1. Under regulations and conditions prescribed by the Office of Personnel Management, a present or former officer or employee of the Foreign

Service may be appointed in the competitive service if he:

* * * * *

EX. ORD. NO. 11315. AMENDING THE CIVIL SERVICE RULES TO AUTHORIZE AN EXECUTIVE ASSIGNMENT SYSTEM FOR POSITIONS IN GRADES 16, 17, AND 18 OF THE GENERAL SCHEDULE

Ex. Ord. No. 11315, Nov. 17, 1966, 31 F.R. 14729, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

* * * * *

PART I. CIVIL SERVICE RULES

SECTION 1. The Civil Service Rules are amended by the addition of Civil Service Rule IX reading as follows:

RULE IX. EXECUTIVE ASSIGNMENT SYSTEM FOR POSITIONS IN GRADES GS-16, 17, AND 18 OF THE GENERAL SCHEDULE

In General

* * * * *

SEC. 9.2 *Filling positions covered by this Rule.* An appointing officer shall fill a position covered by this Rule by Career Executive Assignment, unless the Office authorizes a Limited Executive Assignment under section 9.6 of this Rule or a Noncareer Executive Assignment under section 9.20 of this Rule.

Career Executive Assignments

SEC. 9.3 *Qualifications required for a Career Executive Assignment.* After appropriate consultation with the agency concerned the Office shall establish specific qualification standards for assignment to a Career Executive Assignment.

SEC. 9.4 *Recruitment for Career Executive Assignments.* (a) Before selecting any person for a Career Executive Assignment the appointing officer shall first consider fully employees under his agency's merit promotion program and available employees of other Federal agencies qualified pursuant to paragraph (b) of this section. Only after this consideration may the appointing officer elect to recruit applicants from outside the Federal service pursuant to paragraph (b) of this section.

(b) The Office shall be responsible for the establishment of special facilities, including special boards and panels, to recruit well-qualified persons for Career Executive Assignments in the Federal service from among employees holding Career Executive Assignments, other eligible employees, and persons outside the Federal service. The appointing officer shall use these special facilities, including special boards and panels, to recruit applicants from outside the Federal service.

(c) The procedures in this section do not apply when the Office authorizes the movement of an incumbent Career Executive to a Career Executive Assignment at the same or lower grade.

SEC. 9.5 *Career Executive Assignments; selection and assignment.* (a) An appointing officer shall select a person for a Career Executive Assignment solely on the basis of merit and fitness. He shall not permit or consider any political test, qualification, clearance, or recommendation, and shall not discriminate on the basis of race, religion, national origin, sex, age, or physical disability.

(b) The appointing officer may make a Career Executive Assignment only after the Office has finally approved the qualifications and suitability of the person selected.

SEC. 9.6 *Authorization of Limited Executive Assignments.* (a) The Office may authorize agencies to fill a position covered by this Rule by a Limited Executive Assignment when:

* * * * *

(b) The Office shall specify a time limit within which an agency may use this authority and may revoke this authority at any time.

SEC. 9.7 *Qualifications required for a Limited Executive Assignment.* After appropriate consultation with the agency concerned the Office shall establish specific qualification standards for assignment to a Limited Executive Assignment.

SEC. 9.8 *Limited Executive Assignment; selection and assignment.* An appointing officer may make a Limited Executive Assignment only after the Office has finally approved the qualifications of the person selected.

* * * * *

Noncareer Executive Assignments

SEC. 9.20 *Exception of positions to be filled by Noncareer Executive Assignments.* (a) After consulting the agency concerned, the Office may except a position from the procedures required for making Career Executive Assignments and authorize an agency to fill the position by a Noncareer Executive Assignment when it determines that there is a need for filling the position by a person who will:

* * * * *

(b) In determining the positions to be excepted under paragraph (a) of this section the Office shall:

* * * * *

(c) The Office shall not except a position which has as its principal responsibility the internal management of an agency, or a position involving long-standing recognized professional duties and responsibilities resting on a body of knowledge essentially politically neutral in nature. However, a position concerned with the direction of a scientific program could be appropriately excepted when it meets the criteria set forth in paragraph (a)(1), (2), or (3) of this section.

(d) The Office shall review periodically the exceptions made under this section and after consulting the agency concerned, shall revoke an exception when the position no longer meets the criteria for exception. Civil Service Rule III, providing for the noncompetitive acquisition of competitive status, shall not apply in such a case.

(e) Notice of the Office's decision to grant or revoke authority to make Noncareer Executive Assignments shall be published in the Federal Register.

SEC. 9.21 *Qualifications required for a Noncareer Executive Assignment.* After appropriate consultation with the agency concerned the Office shall establish specific qualification standards for assignment to a Noncareer Executive Assignment. In addition, as a qualification for continuance in a Noncareer Executive Assignment, the incumbent must continue to maintain the qualifications and relationships that are required for the particular Noncareer Executive Assignment.

SEC. 9.22 *Noncareer Executive Assignment; selection and assignment.* An appointing officer may make a Noncareer Executive Assignment only after the Office has finally approved the qualifications of the person selected. He shall inform each person selected of the qualifications required under section 9.21 of this Rule for assignment to and continuance in a Noncareer Executive Assignment.

* * * * *

CIVIL SERVICE RULE VI

SEC. 2. Civil Service Rule VI is amended in pertinent part as follows:

(a) Section 6.1(a) is amended to read as follows:

"(a) The Office may except positions from the competitive service when it determines that appointments thereto through competitive examination are not practicable. These positions shall be listed in the Office's annual report for the fiscal year in which the exceptions are made. The exception from the competitive service is effective on publication in the Federal Register."

(b) Section 6.6 is amended to read as follows:

"Section 6.6 *Revocation of exceptions.* The Office may remove any position from or may revoke in whole or in part any provision of Schedule A, B, or C. These changes are effective on publication in the Federal Register."

PART II. SPECIAL PROVISIONS FOR TRANSITION TO THE FULL ESTABLISHMENT OF EXECUTIVE ASSIGNMENTS UNDER RULE IX

SEC. 3. *Effective dates.* This order, except section 1, is effective upon filing for publication in the Federal Register. Section 1 of this order is effective not later than one year from the date of this order, or at such earlier dates as the Office of Personnel Management may specify for individual agencies or positions.

* * * * *

PART III. ADMINISTRATION

SEC. 6. *Office responsibilities.* The Office of Personnel Management is responsible to the President for the effective implementation and administration of the executive assignment system established by this Order. The Office shall continuously review operations under this system, shall recommend promptly to the President any changes that are necessary to improve this system, and shall report periodically to the President any significant developments in the operation of the system. The Office shall recommend to the President a program of special honors and awards for the recognition of persons assigned to Career Executive Assignments and a program for the development and training of persons assigned to Career Executive Assignments. The training program shall include the establishment of special training and educational facilities, and provide for the relevant use of outside training facilities.

SEC. 7. *Responsibilities of the agencies.* The head of each agency in which there are positions covered by Civil Service Rule IX shall periodically review with the Office of Personnel Management his plans for staffing. The head of a newly established agency shall initially review with the Office his plans for staffing as soon as practicable after the establishment of the agency. The head of each agency shall cooperate fully with the Office in the establishment of special facilities and special boards and panels that are required under Civil Service Rule IX as a means of recruiting persons of the highest quality.

SEC. 8. *Regulations.* The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose and intent of this Order.

EXECUTIVE ORDER NO. 11813

Ex. Ord. No. 11813, Oct. 7, 1974, 39 F.R. 36317, set out as a note under this section in the 1976 edition to this Code, which related to career or career-conditional appointments for cooperative education students, was revoked by Ex. Ord. No. 12015, Oct. 26, 1977, 42 F.R. 56947, set out as a note below.

EX. ORD. NO. 11935. AMENDING THE CIVIL SERVICE RULES CONCERNING CITIZENSHIP REQUIREMENTS FOR FEDERAL EMPLOYMENT

Ex. Ord. No. 11935, Sept. 2, 1976, 41 F.R. 37301, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

* * * * * *

"SECTION 7.4. CITIZENSHIP

"(a) No person shall be admitted to competitive examination unless such person is a citizen or national of the United States.

"(b) No person shall be given any appointment in the competitive service unless such person is a citizen or national of the United States.

"(c) The Office may, as an exception to this rule and to the extent permitted by law, authorize the appointment of aliens to positions in the competitive service when necessary to promote the efficiency of the service in specific cases or for temporary appointments.".

EX. ORD. NO. 11955. CAREER OR CAREER-CONDITIONAL APPOINTMENT TO CERTAIN QUALIFIED EMPLOYEES OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Ex. Ord. No. 11955, Jan. 10, 1977, 42 F.R. 2499, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

* * * * * *

SECTION 1. The appointment of a Command Pilot, Pilot or Mission Specialist candidate to a position in the Space Shuttle Astronaut Program of the National Aeronautics and Space Administration, which is listed under Schedule B of the Schedule of Excepted Positions, may be converted to career or career-conditional appointment if:

* * * * *

(c) the candidate meets noncompetitive examination standards prescribed by the Office of Personnel Management; and

(d) the candidate meets all other requirements prescribed by the Office of Personnel Management pursuant to section 3 of this order.

* * * * *

SEC. 3. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this order.

EX. ORD. NO. 12008. PRESIDENTIAL MANAGEMENT INTERN PROGRAM

Ex. Ord. No. 12008, Aug. 25, 1977, 42 F.R. 43373, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by Sections 3301 and 3302 of Title 5 of the United States Code, Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. There is hereby established the Presidential Management Intern Program, hereafter referred to as the Program, the purpose of which is to attract to Federal service men and women of exceptional management potential who have received special training in planning and managing public programs and policies.

SEC. 2. Outstanding individuals who have pursued a course of study oriented toward public management at a graduate-level educational institution and who, at the time of application, have recently received or will shortly receive an appropriate advanced degree, are eligible to apply for participation in the Program.

SEC. 3. The Office of Personnel Management, hereafter referred to as the Office, shall develop appropri-

ate procedures for the recruitment, screening, and selection of applicants possessing the qualifications described in Section 2 of this order. In developing these procedures, the Office shall be guided by the following principles and policies:

(a) The number of interns participating in the Program shall at no time exceed five hundred.

(b) Final selection of interns shall be made by the head of the department, agency, or component within the Executive Office of the President in which the intern is to be employed, or by the designee thereof.

(c) The procedures so developed shall provide for such affirmative actions as the Office deems appropriate to assure equal employment opportunity.

(d) To the extent permitted by law, the Office is authorized to enter into appropriate cooperative arrangements with State and local officials and appropriate private institutions for recruitment and screening of candidates for the Program.

SEC. 4. Upon selection, candidates shall be appointed as interns to positions in Schedule A of the excepted service for a period not to exceed two years. Their tenure shall be governed by the following principles and policies:

(a) Interns shall be assigned responsibilities consistent with their public management backgrounds and the purposes of this Program.

(b) Continuation in the Program shall be contingent upon satisfactory performance by the interns throughout the internship period.

(c) Except as provided in subsection (d) of this Section, service as interns shall confer no rights to further Federal employment in either the competitive or excepted service upon expiration of the two-year internship period.

(d) Interns may be granted competitive civil service status if they satisfactorily complete their two-year internships and meet all other requirements prescribed by the Office.

SEC. 5. The Office shall prescribe such regulations as may be necessary to carry out the purposes of this order.

JIMMY CARTER.

EX. ORD. NO. 12015. CAREER OR CAREER-CONDITIONAL APPOINTMENTS IN COMPETITIVE SERVICE FOR STUDENTS COMPLETING APPROVED CAREER-RELATED WORK-STUDY PROGRAMS

Ex. Ord. No. 12015, Oct. 26, 1977, 42 F.R. 56947, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. As used in this order "career-related work-study programs" are those programs established by the Office of Personnel Management which provide for a formally-arranged schedule of periods of attendance at an accredited school combined with periods of career-related work in a Federal agency under a Schedule B appointment.

SEC. 2. The appointment of a student to a position in a career-related work-study program may be converted noncompetitively to a career or career-conditional appointment if the student:

(a) has completed within the preceding 120 days an educational program that meets the provisions established by the Office of Personnel Management;

(b) has satisfied all course requirements leading to completion of the related curriculum at an accredited school;

(c) is recommended for such an appointment by the employing agency in which the career-related work was performed; and,

(d) satisfies such other requirements and conditions as the Office of Personnel Management may prescribe for career or career-conditional appointment of an individual in career-related work-study programs.

SEC. 3. The Office of Personnel Management shall prescribe such regulations as it deems necessary to carry out the provisions of this order and to provide for the continuation of planning, implementation and evaluation of employment programs for students throughout the Government. These regulations shall provide for the periodic evaluation of the work of each student and require that each student's continuation in the program shall be dependent upon a finding of satisfactory performance.

SEC. 4. Executive Order No. 11813 of October 7, 1974, is hereby revoked.

JIMMY CARTER.

EX. ORD. NO. 12021. AMENDING THE CIVIL SERVICE RULES TO EXCEPT CERTAIN POSITIONS FROM THE CAREER SERVICE

Ex. Ord. No. 12021, Nov. 30, 1977, 42 F.R. 61237, provided:

By virtue of the authority vested in me by the Constitution of the United States of America, and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. That portion of Section 6.8 of Civil Service Rule VI following the heading "Specified Exceptions." (5 C.F.R. 6.8) is designated subsection (a) and a new subsection (b) is added as follows:

"(b) Positions in the Community Services Administration and ACTION whose incumbents serve as regional director or regional administrator shall be listed in Schedule C for grades not exceeding GS–15 of the General Schedule and shall be designated Noncareer Executive Assignments for positions graded higher than GS–15. Incumbents of these positions who are, on November 29, 1977, in the competitive service shall not be affected by the foregoing provisions of this subsection.".

SEC. 2. That portion of Section 9.11 of Civil Service Rule IX following the heading "Career Executive Assignments; selection and assignment." (5 C.F.R. 9.11) is designated subsection (a) and a new subsection (b) is added as follows:

"(b) The regional director or regional administrator positions in the Defense Civil Preparedness Agency and the General Services Administration shall be designated as Noncareer Executive Assignments and the Limited Executive Assignments of any incumbents of these positions on November 29, 1977, are converted to Noncareer Executive Assignments. Incumbents of these positions who are, on November 29, 1977, serving in Career Executive Assignments shall not be affected by the foregoing provisions of this subsection.".

JIMMY CARTER.

EXECUTIVE ORDER NO. 12026

For provisions relating to eligibility for reinstatement in the competitive civil service of certain employees of the Energy Department, see Ex. Ord. No. 12026, Dec. 5, 1977, 42 F.R. 61849, set out as a note under section 7292 of Title 42, The Public Health and Welfare.

EX. ORD. NO. 12043. AMENDING THE CIVIL SERVICE RULES REGARDING NOTICE OF EXEMPTIONS FROM THE COMPETITIVE SERVICE

Ex. Ord. No. 12043, Mar. 7, 1978, 43 F.R. 9773, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by the Constitution of the United States of America, and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Section 6.1 of Civil Service Rule VI (5 CFR 6.1) is amended by deleting the third sentence in subsection (a) thereof and by adding a new subsection (c) as follows:

"(c) Notice of the Office's decision granting authority to make appointments to an excepted position

under the appropriate schedule shall be published in the FEDERAL REGISTER.".

SEC. 2. Section 6.6 of the Civil Service Rule VI (5 CFR 6.6) is amended by deleting the second sentence thereof and substituting "Notice of the Office's decision making these changes shall be published in the FEDERAL REGISTER.".

SEC. 3. Section 9.6 of the Civil Service Rule IX (5 CFR 9.6) is amended by adding a new subsection (c) as follows:

"(c) The Office shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Limited Executive Assignment.".

SEC. 4. Section 9.20 of Civil Service Rule IX (5 CFR 9.20) is amended by adding a new subsection (f) as follows:

"(f) The Office shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Noncareer Executive Assignment.".

JIMMY CARTER.

§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) necessary exceptions of positions from the competitive service; and

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, 7203, 7321, and 7322 of this title.

Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.

(As amended Pub. L. 95-228, § 2(b), Feb. 10, 1978, 92 Stat. 25; Pub. L. 95-454, title VII, § 703(c)(1), Oct. 13, 1978, 92 Stat. 1217.)

CODIFICATION

Amendments by section 703(c)(1) and (c)(2) of Pub. L. 95-454 appear to have been inadvertently reversed. Subsec. (c)(1) purports to amend subsec. (c)(1) of section 2105 of this title, and subsec. (c)(2) purports to amend section par. (2) of this section. However, the amendments specified by Pub. L. 95-454, § 703(c)(1) and (2), are impossible to execute literally. Thus, the amendment by Pub. L. 95-454, § 703(c)(2) was executed to section 2105 of this title, and the amendment by section 703(c)(1) was executed to this section as the probable intent of Congress.

AMENDMENTS

1978—Par. (2). Pub. L. 95-454 substituted "7202, 7203" for "7152, 7153".

Pub. L. 95-228 struck out reference to section 3306(a)(1) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

EX. ORD. NO. 11521. VETERANS READJUSTMENT APPOINTMENT FOR VETERANS OF VIETNAM ERA

Ex. Ord. No. 11521, Mar. 26, 1970, 35 F.R. 5311, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[See main edition for text of first six pars.]

SECTION 1. (a) Subject to paragraph (b) of this section, the head of an agency may make an excepted appointment, to be known as a "veterans readjustment appointment", to any position in the competitive service up to and including GS-5 or the equivalent thereof, of a veteran or disabled veteran as defined in section 2108(1), (2), of title 5, United States Code, who:

[See main edition for text of (1) to (3)]

(b) Employment under paragraph (a) of this section is authorized only under a training or educational program developed by an agency in accordance with guidelines established by the Office of Personnel Management.

[See main edition for text of (c) to (g)]

SEC. 2. (a) A person eligible for appointment under section 1 of this order may be appointed only within one year after his separation from the armed forces, or one year following his release from hospitalization or treatment immediately following his separation from the armed forces, or one year after involuntary separation without cause from (i) a veterans readjustment appointment or (ii) a transitional appointment, or one year after the effective date of this order if he is serving under a transitional appointment.

(b) The Office of Personnel Management may determine the circumstances under which service under a transitional appointment may be deemed service under a veterans readjustment appointment for the purpose of paragraph (f) of section 1 of this order.

[See main edition for text of secs. 3 and 4]

SEC. 5. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the provisions of this order.

[See main edition for text of secs. 6 and 7]

§ 3304. Competitive service; examinations

[See main edition for text of (a) to (c)]

(d) Employees at any place outside the District of Columbia where the President or the Office of Personnel Management directs that examinations be held shall allow the reasonable use of public buildings for, and in all proper ways facilitate, holding the examinations.

(As amended Pub. L. 95-454, title IX, § 906(a)(5), Oct. 13, 1978, 92 Stat. 1225.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-454 substituted "the Office of Personnel Management" for "a Civil Service Commission board of examiners".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3304a. Competitive service; career appointment after 3 years' temporary service

(a) An individual serving in a position in the competitive service under an indefinite appointment or a temporary appointment pending establishment of a register (other than an individual serving under an overseas limited appointment, or in GS-16, GS-17, or GS-18) acquires competitive status and is entitled to have his appointment converted to a career appointment, without condition, when—

(1) he completes, without break in service of more than 30 days, a total of at least 3 years of service in such a position;

(2) he passes a suitable noncompetitive examination;

(3) the appointing authority (A) recommends to the Office of Personnel Management that the appointment of the individual be converted to a career appointment and (B) certifies to the Office that the work performance of the individual for the past 12 months has been satisfactory; and

(4) he meets Office qualification requirements for the position and is otherwise eligible for career appointment.

[*See main edition for text of* (b) *and* (c)]

(d) The Office of Personnel Management may prescribe regulations necessary for the administration of this section.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

Subsec. (d). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3305. Competitive service; examinations; when held

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 1438; title 38 sections 106, 4202; title 40 section 42.

[§ 3306. Repealed. Pub. L. 95-228, § 1, Feb. 10, 1978, 92 Stat. 25]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 419, related to apportionment of appointments in the departmental service in the District of Columbia among the States, territories, etc.

§ 3307. Competitive service; maximum-age entrance requirements; exceptions

EX. ORD. NO. 11817. OFFICE OF PERSONNEL MANAGEMENT DESIGNATED AGENT TO CONCUR WITH AGENCY DETERMINATION FIXING AGE LIMITS FOR MAKING ORIGINAL APPOINTMENTS RESPECTING LAW ENFORCEMENT OFFICER AND FIREFIGHTER POSITIONS

Ex. Ord. No. 11817, Nov. 5, 1974, 39 F.R. 39427, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 3307(d) of title 5 of the United States Code, as added by the first section of the Act of July 12, 1974 (Public Law 93-350; 88 Stat. 355), I hereby designate the Office of Personnel Management as the agency to concur with determinations made by agencies to fix the minimum and maximum limits of age within which an original appointment may be made to a position as a law enforcement officer or fire fighter, as defined by section 8331(20) and (21), respectively, of title 5 of the United States Code. The designation made by this order shall be effective as of October 15, 1974.

§ 3308. Competitive service; examinations; educational requirements prohibited; exceptions

The Office of Personnel Management or other examining agency may not prescribe a minimum educational requirement for an examination for the competitive service except when the Office decides that the duties of a scientific, technical, or professional position cannot be performed by an individual who does not have a prescribed minimum education. The Office shall make the reasons for its decision under this section a part of its public records.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438; title 38 sections 106, 4202.

§ 3309. Preference eligibles; examinations; additional points for

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3313, 3320 of this title; title 22 section 1438; title 38 sections 106, 4202.

§ 3310. Preference eligibles; examinations; guards, elevator operators, messengers, and custodians

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438; title 38 sections 106, 4202.

§ 3311. Preference eligibles; examinations; crediting experience

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438; title 38 sections 106, 4202.

§ 3312. Preference eligibles; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for examination for, appointment in, or reinstatement in the competitive service, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible under section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position,

the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in any such response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

(As amended Pub. L. 95–454, title III, § 307(c), title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1148, 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, §§ 307(c)(1), 906(a)(2), (3), designated existing provisions as subsec. (a) and, as so designated, substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsec. (b). Pub. L. 95–454, § 307(c)(2), added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438; title 38 sections 106, 4202.

§ 3313. Competitive service; registers of eligibles

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3314, 3315, 3320 of this title; title 22 section 1438; title 38 sections 106, 4202.

§ 3314. Registers; preference eligibles who resigned

A preference eligible who resigns, on request to the Office of Personnel Management, is entitled to have his name placed again on all registers for which he may have been qualified, in the order named by section 3313 of this title.

(As amended Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95–454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438; title 38 sections 106, 4202.

§ 3315. Registers; preference eligibles furloughed or separated

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438; title 38 sections 106, 4202.

§ 3316. Preference eligibles; reinstatement

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438; title 38 sections 106, 4202.

§ 3317. Competitive service; certification from registers

(a) The Civil Service Commission shall certify enough names from the top of the appropriate register to permit a nominating or appointing authority who has requested a certificate of eligibles to consider at least three names for appointment to each vacancy in the competitive service.

(b) When an appointing authority, for reasons considered sufficient by the Office, has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification.

(As amended Pub. L. 95–454, title IX, § 906(a)(3), Oct. 13, 1978, 92 Stat. 1224.)

REFERENCES IN TEXT

The term "Civil Service Commission", referred to in subsec. (a) was not amended by section 906(a)(2) of Pub. L. 95–454 by substitution of the term "Office of Personnel Management" to reflect the general transfer of functions of the Civil Service Commission to the Office of Personnel Management, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of this title.

The "Office", referred to in subsec. (b), is the Office of Personnel Management which replaced the Civil Service Commission pursuant to the Civil Service Reform Act of 1978, Pub. L. 95–454.

CODIFICATION

Amendment by section 906(a)(3) of Pub. L. 95–454 has not been executed to section "3317b" of this title as provided for in the enacting language but rather to section "3317(b)" of this title as the probable intent of Congress.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–454 substituted "Office" for "Commission". See Codification note above.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3110, 3318, 3320 of this title; title 22 section 1438; title 38 sections 106, 4202.

§ 3318. Competitive service; selection from certificates

(a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Office of Personnel Management for proper and adequate reason under regulations prescribed by the Office.

(b)(1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office for passing over the preference eligible. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office.

(2) In the case of a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address.

(3) A preference eligible not described in paragraph (2) of this subsection, or his representative, shall be entitled, on request, to a copy of—

(A) the reasons submitted by the appointing authority in support of the proposed passover, and

(B) the findings of the Office.

(4) In the case of a preference eligible described in paragraph (2) of this subsection, the functions of the Office under this subsection may not be delegated.

[*See main edition for text of* (c)]

(As amended Pub. L. 95–454, title III, § 307(d), title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1148, 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsec. (b). Pub. L. 95–454, § 307(d), designated existing provisions as par. (1) and, as so designated, substituted provisions respecting authority of the Office with respect to the selection procedures applicable, for provisions respecting authority of the Commission with respect to the selection procedures applicable, and added pars. (2) to (4).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 22 section 1438; title 38 sections 106, 4202.

[§ 3319. Repealed. Pub. L. 95–454, title III, § 307(h)(1), Oct. 13, 1978, 92 Stat. 1149]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 421, related to prohibitions on employment of members of the same family in the competitive service.

EFFECTIVE DATE OF REPEAL

Section repealed effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3320. Excepted service; government of the District of Columbia; selection

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 sections 1234, 1438; title 38 sections 106, 4202.

§ 3321. Competitive service; probationary period

(a) The President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant for a period of probation—

(1) before an appointment in the competitive service becomes final; and

(2) before initial appointment as a supervisor or manager becomes final.

(b) An individual—

(1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and

(2) who does not satisfactorily complete the probationary period under subsection (a)(2) of this section,

shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned, or promoted. Nothing in this section prohibits an agency from taking an action against an individual serving a probationary period under subsection (a)(2) of this section for cause unrelated to supervisory or managerial performance.

(c) Subsections (a) and (b) of this section shall not apply with respect to appointments in the Senior Executive Service.

(As amended Pub. L. 95–454, title III, § 303(a), Oct. 13, 1978, 92 Stat. 1146.)

AMENDMENTS

1978—Pub. L. 95–454 in the section catchline substituted "probationary period" for "probation; period of", designated existing provisions as subsec. (a) and, as designated, substituted provisions authorizing the President to take necessary action, for provisions au-

thorizing the President to prescribe rules, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3302, 4303, 7512 of this title.

[§ 3322. Repealed. Pub. L. 95-256, § 5(b)(1), Apr. 6, 1978, 92 Stat. 191]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422, related to temporary appointments after age 70 in the competitive service.

EFFECTIVE DATE OF REPEAL

Repeal of section by Pub. L. 95-256 effective Sept. 30, 1978, see section 5(f) of Pub. L. 95-256, set out as an Effective Date of 1978 Amendment note under section 633a of Title 29, Labor.

§ 3324. Appointments at GS-16, 17, and 18

(a) An appointment to a position in GS-16, 17, or 18 may be made only on approval of the qualifications of the proposed appointee by the Office of Personnel Management. This section does not apply to a position—

[See main edition for text of (1) to (4)]

(b) The Office may prescribe regulations necessary for the administration of this section.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1205, 1206, 7204 of this title; title 10 sections 4540, 7212, 9540; title 42 section 7231.

§ 3325. Appointments to scientific and professional positions

(a) Positions established under section 3104 of this title are in the competitive service. However, appointments to the positions are made without competitive examination on approval of the qualifications of the proposed appointee by the Office of Personnel Management or its designee for this purpose.

(b) This section does not apply to positions established under section 3104(a)(7) of this title.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3327. Civil service employment information

(a) The Office of Personnel Management shall provide that information concerning opportunities to participate in competitive examinations conducted by, or under authority delegated by, the Office of Personnel Management shall be made available to the employment offices of the United States Employment Service.

(b) Subject to such regulations as the Office may issue, each agency shall promptly notify the Office and the employment offices of the United States Employment Service of—

(1) each vacant position in the agency which is in the competitive service or the Senior Executive Service and for which the agency seeks applications from persons outside the Federal service, and

(2) the period during which applications will be accepted.

As used in this subsection, "agency" means an agency as defined in section 5102(a)(1) of this title other than an agency all the positions in which are excepted by statute from the competitive service.

(Added Pub. L. 95-454, title III, § 309(a), Oct. 13, 1978, 92 Stat. 1151.)

PRIOR PROVISIONS

A prior section 3327, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424, which prescribed standards for determination of qualifications of postmasters, including experience in postal field service, seniority, length of service, level of difficulty and responsibility of work, attendance, awards and commendations, and performance rating, was repealed by Pub. L. 91-375, § 6(c)(7)(A), Aug. 12, 1970, 84 Stat. 776. See section 1001 of Title 39, Postal Service.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SUBCHAPTER II—OATH OF OFFICE

§ 3331. Oath of office

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2903, 2904, 2905, 2906, 3332, 5792 of this title; title 2 section 64-1; title 10 sections 591, 5792; title 14 sections 273, 797; title 22 section 2504; title 33 section 854a-2; title 42 section 1971; title 50 App. section 1597.

§ 3332. Officer affidavit; no consideration paid for appointment

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5507 of this title; title 42 section 211.

SUBCHAPTER III—DETAILS

§ 3344. Details; administrative law judges

An agency as defined by section 551 of this title which occasionally or temporarily is insufficiently staffed with administrative law judges appointed under section 3105 of this title may use administrative law judges selected by the Office of Personnel Management from and with the consent of other agencies.

(As amended Pub. L. 95-251, § 2(a)(1), (b)(2), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

Pub. L. 95-251 substituted references to administrative law judges for references to hearing examiners in the section catchline and wherever appearing in the text.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 559, 1305 of this title; title 15 section 1715; title 16 section 1536; title 29 section 661; title 30 section 823; title 42 sections 2000e-4, 3608, 3755.

SUBCHAPTER IV—TRANSFERS

§ 3351. Preference eligibles; transfer; physical qualifications; waiver

In determining qualifications of a preference eligible for transfer to another position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 1438; title 38 sections 106, 4202.

SUBCHAPTER V—PROMOTION

§ 3363. Preference eligibles; promotion; physical qualifications; waiver

In determining qualifications of a preference eligible for promotion to another position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 1438; title 38 sections 106, 4202.

SUBCHAPTER VI—ASSIGNMENTS TO AND FROM STATES

§ 3371. Definitions

For the purpose of this subchapter—

(1) "State" means—

(A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States; and

(B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality;

(2) "local government" means—

(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1);

(B) any general or special purpose agency of such a political subdivision, instrumentality, or authority; and

(C) any Indian tribe, band, nation, or other organized group or community, in-

cluding any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act;

(3) "Federal agency" means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management; and

(4) "other organization" means—

(A) a national, regional, State-wide, area-wide, or metropolitan organization representing member State or local governments;

(B) an association of State or local public officials; or

(C) a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management.

(As amended Pub. L. 95–454, title VI, § 603(a), Oct. 13, 1978, 92 Stat. 1189.)

AMENDMENTS

1978—Par. (1)(A). Pub. L. 95–454, § 603(a)(1), added reference to the Trust Territory of the Pacific Islands.

Pars. (3), (4). Pub. L. 95–454, § 603(a)(2), added pars. (3) and (4).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

DECLARATION OF PURPOSE

Section 401 of Pub. L. 91–648, as amended by Pub. L. 95–454, title VI, § 602(b), Oct. 13, 1978, 92 Stat. 1189, provided that: "The purpose of this title [which enacted this subchapter and repealed sections 1881 to 1888 of Title 7, section 869b of Title 20, and section 246(f) of Title 42 (less applicability to commissioned officers of the Public Health Service)] is to provide for the temporary assignment of personnel between the Federal Government and State and local governments, institutions of higher education, and other organizations."

§ 3372. General provisions

(a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of a Federal agency may arrange for the assignment of—

(1) an employee of his agency, other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character, to a State or local government; and

(2) an employee of a State or local government to his agency;

for work of mutual concern to his agency and the State or local government that he determines will be beneficial to both. The period of an assignment under this subchapter may not exceed two years. However, the head of a Federal agency may extend the period of assignment for not more than two additional years.

(b) This subchapter is authority for and applies to the assignment of—

(1) an employee of a Federal agency to an institution of higher education;

(2) an employee of an institution of higher education to a Federal agency;

(3) an employee of a Federal agency to any other organization; and

(4) an employee of an other organization to a Federal agency.

(c)(1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve in the civil service upon the completion of the assignment for a period equal to the length of the assignment.

(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the Federal agency from which assigned) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States.

(As amended Pub. L. 95–454, title VI, § 603(b), (c), Oct. 13, 1978, 92 Stat. 1190.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 603(b), (c)(1), substituted "a Federal" for "an executive" wherever appearing, and in cl. (1) added provisions relating to a noncareer appointee, limited term appointee, or limited emergency appointee, and an employee excepted from the competitive service.

Subsec. (b). Pub. L. 95–454, § 603(b), (c)(2)–(4), in cls. (1) and (2) substituted "a Federal" for "an executive", and added cls. (3) and (4).

Subsec. (c). Pub. L. 95–454, § 603(c)(5), added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3373. Assignment of employees to State and local governments

(a) An employee of a Federal agency assigned to a State or local government under this subchapter is deemed, during the assignment, to be either—

(1) on detail to a regular work assignment in his agency; or

(2) on leave without pay from his position in the agency.

An employee assigned either on detail or on leave without pay remains an employee of his agency. The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee so assigned. The supervision of the duties of an employee on detail may be governed by agreement between the Federal agency and the State or local government concerned.

(b) The assignment of an employee of a Federal agency either on detail or on leave without pay to a State or local government under this subchapter may be made with or without reimbursement by the State or local government for the travel and transportation expenses to or from the place of assignment and for the pay, or supplemental pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the Federal agency used for paying the travel and transportation expenses or pay.

(c) For any employee so assigned and on leave without pay—

[*See main edition for text of (1) and (2)*]

(3) he is entitled, notwithstanding other statutes—

[*See main edition for text of (A)*]

(B) to credit the period of his assignment under this subchapter toward periodic step-increases, retention, and leave accrual purposes, and, on payment into the Civil Service Retirement and Disability Fund or other applicable retirement system of the percentage of his State or local government pay, and of his supplemental pay, if any, that would have been deducted from a like agency pay for the period of the assignment and payment by the Federal agency into the fund or system of the amount that would have been payable by the agency during the period of the assignment with respect to a like agency pay, to treat his service during that period as service of the type performed in the agency immediately before his assignment; and

[*See main edition for text of (C)*]

However, an employee or his beneficiary may not receive benefits referred to in subparagraphs (A) and (B) of this paragraph (3), based on service during an assignment under this subchapter for which the employee or, if he dies without making such an election, his beneficiary elects to receive benefits, under any State or local government retirement or insurance law or program, which the Office of Personnel Management determines to be similar. The Federal agency shall deposit currently in the Employee's Life Insurance Fund, the Employee's Health Benefits Fund or other applicable health benefits system, respectively, the amount of the Government's contributions on account of service with respect to which employee contributions are collected as provided in subparagraphs (A) and (B) of this paragraph (3).

[*See main edition for text of (d)*]

(As amended Pub. L. 95-454, title VI, § 603(b), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1190, 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 603(b), substituted "a Federal" for "an executive", and "Federal agency" for "executive agency".

Subsec. (b). Pub. L. 95-454, § 603(b), substituted "a Federal" for "an executive" and "Federal agency" for "executive agency".

Subsec. (c). Pub. L. 95-454, §§ 603(b), 906(a)(2), substituted "Federal agency" for "executive agency" wherever appearing, and "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3396 of this title.

§ 3374. Assignments of employees from State or local governments

(a) An employee of a State or local government who is assigned to a Federal agency under an arrangement under this subchapter may—

(1) be appointed in the Federal agency without regard to the provisions of this title governing appointment in the competitive service for the agreed period of the assignment; or

(2) be deemed on detail to the Federal agency.

(b) An employee given an appointment is entitled to pay in accordance with chapter 51 and subchapter III of chapter 53 of this title or other applicable law, and is deemed an employee of the Federal agency for all purposes except—

[*See main edition for text of (1) to (3)*]

The above exceptions shall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.

(c) During the period of assignment, a State or local government employee on detail to a Federal agency—

(1) is not entitled to pay from the agency, except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title or other applicable authority;

[*See main edition for text of (2) and (3)*]

The supervision of the duties of such an employee may be governed by agreement between the Federal agency and the State or local government concerned. A detail of a State or local government employee to a Federal agency may be made with or without reimbursement by the

Federal agency for the pay, or a part thereof, of the employee during the period of assignment, or for the contribution of the State or local government, or a part thereof, to employee benefit systems.

(d) A State or local government employee who is given an appointment in a Federal agency for the period of the assignment or who is on detail to a Federal agency and who suffers disability or dies as a result of personal injury sustained while in the performance of his duty during the assignment shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(e) If a State or local government fails to continue the employer's contribution to State or local government retirement, life insurance, and health benefit plans for a State or local government employee who is given an appointment in a Federal agency, the employer's contributions covering the State or local government employee's period of assignment, or any part thereof, may be made from the appropriations of the Federal agency concerned.

(As amended Pub. L. 95–454, title VI, § 603(b), (d), Oct. 13, 1978, 92 Stat. 1190.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 603(b), substituted "a Federal" for "an executive", and "Federal agency" for "executive agency" in two places.

Subsec. (b). Pub. L. 95–454, § 603(b), (d)(1), added provisions relating to nonapplicability of exceptions to non-Federal employees, and substituted "Federal" for "executive".

Subsec. (c). Pub. L. 95–454, § 603(b), (d)(2), (3), added provisions relating to pay received from the State or local government at less than the appropriate rate of pay, and provisions relating to contributions to employee benefit systems, and substituted "a Federal" for "an executive" and "Federal agency" for "executive agency" wherever appearing therein.

Subsec. (d). Pub. L. 95–454, § 603(b), substituted "a Federal" for "an executive" in two places.

Subsec. (e). Pub. L. 95–454, § 603(b), substituted "a Federal" for "an executive", and "Federal" for "executive".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3375. Travel expenses

(a) Appropriations of a Federal agency are available to pay, or reimburse, a Federal or State or local government employee in accordance with—

(1) subchapter I of chapter 57 of this title, for the expenses of—

(A) travel, including a per diem allowance, to and from the assignment location;

(B) a per diem allowance at the assignment location during the period of the assignment; and

(C) travel, including a per diem allowance, while traveling on official business away from his designated post of duty during the assignment when the head of the Federal agency considers the travel in the interest of the United States;

[*See main edition for text of (2) and (3)*]

(4) section 5724a(a)(3) of this title, for subsistence expenses of the employee and his immediate family while occupying temporary quarters at the assignment location and on return to his former post of duty;

(5) section 5724a(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and

(6) section 5726(c) of this title, for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

(b) Expenses specified in subsection (a) of this section, other than those in paragraph (1)(C), may not be allowed in connection with the assignment of a Federal or State or local government employee under this subchapter, unless and until the employee agrees in writing to complete the entire period of his assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Federal agency concerned. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The head of the Federal agency concerned may waive in whole or in part a right of recovery under this subsection with respect to a State or local government employee on assignment with the agency.

(c) Appropriations of a Federal agency are available to pay expenses under section 5742 of this title with respect to a Federal or State or local government employee assigned under this subchapter.

(As amended Pub. L. 95–454, title VI, § 603(b), (e), Oct. 13, 1978, 92 Stat. 1190, 1191.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 603(b), (e), in the introductory material substituted "a Federal agency" for "an executive agency", in cl. (1) substituted "Federal" for "executive", added cl. (5), and redesignated former cl. (5) as (6).

Subsec. (b). Pub. L. 95–454, § 603(b), substituted "the Federal" for "the executive".

Subsec. (c). Pub. L. 95–454, § 603(b), substituted "a Federal agency" for "an executive agency".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3376. Regulations

EX. ORD. NO. 11589. DELEGATION OF FUNCTIONS TO OFFICE OF PERSONNEL MANAGEMENT

Ex. Ord. No. 11589, Apr. 1, 1971, 36 F.R. 6343, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Office of Personnel Management is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

[See main edition for text of (a) and (b), sec. 2]

SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS

§ 3383. Determinations; review procedures

[See main edition for text of (a)]

(b) If the Secretary does not rescind his determination within 15 days after his receipt of the written request filed by the controller under subsection (a) of this section, the Secretary shall immediately convene a board of review, consisting of—

(1) a person designated by the controller;

(2) a representative of the Department of Transportation designated by the Secretary; and

(3) a representative of the Merit Systems Protection Board, designated by the Chairman, who shall serve as chairman of the board of review.

[See main edition for text of (c) and (d)]

(As amended Pub. L. 95-454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.)

AMENDMENTS

1978—Subsec. (b)(3). Pub. L. 95-454 substituted "Merit Systems Protection Board" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

PRIOR PROVISIONS

A prior subchapter VIII, added Pub. L. 95-437, § 3(a), Oct. 10, 1978, 92 Stat. 1056, which related to part-time career employment opportunities, was redesignated as chapter 34 of this title by Pub. L. 95-454, title IX, § 906(c)(1)(A), Oct. 13, 1978, 92 Stat. 1226.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1205, 1206 of this title.

§ 3391. Definitions

For the purpose of this subchapter, "agency", "Senior Executive Service position", "senior executive", "career appointee", "limited term appointee", "limited emergency appointee", "noncareer appointee", and "general position" have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95-454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1161.)

PRIOR PROVISIONS

A prior section 3391, added Pub. L. 95-437, § 3(a), Oct. 10, 1978, 92 Stat. 1056, which related to definitions for part-time career employment opportunities, was renumbered as section 3401 of this title by Pub. L. 95-454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415(a)(1), (b) of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

§ 3392. General appointment provisions

(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in the agency—

(1) in accordance with requirements established by the Office of Personnel Management, with respect to standards for career reserved positions, and

(2) after consultation with the Office, with respect to standards for general positions.

(b) Not more than 30 percent of the Senior Executive Service positions authorized under section 3133 of this title may at any time be filled by individuals who did not have 5 years of current continuous service in the civil service immediately preceding their initial appointment to the Senior Executive Service, unless the President certifies to the Congress that the limitation would hinder the efficiency of the Government. In applying the preceding sentence, any break in service of 3 days or less shall be disregarded.

(c) If a career appointee is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule, the career appointee may elect (at such time and in such manner as the Office may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement apply as if the career appointee remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply—

(1) to the extent provided under regulations prescribed by the Office, and

(2) so long as the appointee continues to serve under such Presidential appointment.

(d) Appointment or removal of a person to or from any Senior Executive Service position in an independent regulatory commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

(Added Pub. L. 95–454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1161.)

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (c), is set out in section 5316 of this title.

PRIOR PROVISIONS

A prior section 3392, added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1056, which related to the establishment of part-time career employment programs, was renumbered as section 3402 of this title by Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

§ 3393. Career appointments

(a) Each agency shall establish a recruitment program, in accordance with guidelines which shall be issued by the Office of Personnel Management, which provides for recruitment of career appointees from—

(1) all groups of qualified individuals within the civil service; or

(2) all groups of qualified individuals whether or not within the civil service.

(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency. The boards shall, in accordance with merit staffing requirements established by the Office, conduct the merit staffing process for career appointees, including—

(1) reviewing the executive qualifications of each candidate for a position to be filled by a career appointee; and

(2) making written recommendations to the appropriate appointing authority concerning such candidates.

(c)(1) The Office shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the executive qualifications of candidates for initial appointment as career appointees in accordance with regulations prescribed by the Office. Of the members of each board more than one-half shall be appointed from among career appointees. Appointments to such boards shall be made on a non-partisan basis, the sole selection criterion being the professional knowledge of public management and knowledge of the appropriate occupational fields of the intended appointee.

(2) The Office shall, in consultation with the various qualification review boards, prescribe criteria for establishing executive qualifications for appointment of career appointees. The criteria shall provide for—

(A) consideration of demonstrated executive experience;

(B) consideration of successful participation in a career executive development program which is approved by the Office; and

(C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of executive success and who would not otherwise be eligible for appointment.

(d) An individual's initial appointment as a career appointee shall become final only after the individual has served a 1-year probationary period as a career appointee.

(e) Each career appointee shall meet the executive qualifications of the position to which appointed, as determined in writing by the appointing authority.

(f) The title of each career reserved position shall be published in the Federal Register.

(Added Pub. L. 95–454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1161.)

PRIOR PROVISIONS

A prior section 3393, added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, which related to limitations concerning part-time career employment opportunities, was renumbered as section 3403 of this title by Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3592, 3593, 3594, 7541 of this title.

§ 3394. Noncareer and limited appointments

(a) Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined in writing by the appointing authority.

(b) An individual may not be appointed as a limited term appointee or as a limited emergency appointee without the prior approval of the exercise of such appointing authority by the Office of Personnel Management.

(Added Pub. L. 95–454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1162.)

PRIOR PROVISIONS

A prior section 3394, added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, which related to personnel ceilings, was renumbered as section 3404 of this title by Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3395 of this title.

§ 3395. Reassignment and transfer within the Senior Executive Service

(a)(1) A career appointee in an agency—

(A) may, subject to paragraph (2) of this subsection, be reassigned to any Senior Executive Service position in the same agency for which the appointee is qualified; and

(B) may transfer to a Senior Executive Service position in another agency for which the appointee is qualified, with the approval of the agency to which the appointee transfers.

(2) A career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives a written notice of the reassignment at least 15 days in advance of such reassignment.

(b)(1) Notwithstanding section 3394(b) of this title, a limited emergency appointee may be reassigned to another Senior Executive Service position in the same agency established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or

more positions in such agency under such appointment in excess of 18 months.

(2) Notwithstanding section 3394(b) of this title, a limited term appointee may be reassigned to another Senior Executive Service position in the same agency the duties of which will expire at the end of a term of 3 years or less, except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 3 years.

(c) A limited term appointee or a limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of such types of appointment.

(d) A noncareer appointee in an agency—

(1) may be reassigned to any general position in the agency for which the appointee is qualified; and

(2) may transfer to a general position in another agency with the approval of the agency to which the appointee transfers.

(e)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily reassigned—

(A) within 120 days after an appointment of the head of the agency; or

(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

(i) is a noncareer appointee; and

(ii) has the authority to reassign the career appointee.

(2) Paragraph (1) of this subsection does not apply with respect to—

(A) any reassignment under section 4314(b)(3) of this title; or

(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

(Added Pub. L. 95–454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1163.)

PRIOR PROVISIONS

A prior section 3395, added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, which related to nonapplicability of part-time career employment opportunities program was renumbered as section 3405 of this title by Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

§ 3396. Development for and within the Senior Executive Service

(a) The Office of Personnel Management shall establish programs for the systematic development of candidates for the Senior Executive Service and for the continuing development of senior executives, or require agencies to establish such programs which meet criteria prescribed by the Office.

(b) The Office shall assist agencies in the establishment of programs required under subsection (a) of this section and shall monitor the implementation of the programs. If the Office finds that any agency's program under subsection (a) of this section is not in compliance with the criteria prescribed under such subsection, it shall require the agency to take such corrective action as may be necessary to bring the program into compliance with the criteria.

(c)(1) The head of an agency may grant a sabbatical to any career appointee for not to exceed 11 months in order to permit the appointee to engage in study or uncompensated work experience which will contribute to the appointee's development and effectiveness. A sabbatical shall not result in loss of, or reduction in, pay, leave to which the career appointee is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the agency may authorize in accordance with chapter 57 of this title such travel expenses (including per diem allowances) as the head of the agency may determine to be essential for the study or experience.

(2) A sabbatical under this subsection may not be granted to any career appointee—

(A) more than once in any 10-year period;

(B) unless the appointee has completed 7 years of service—

(i) in one or more positions in the Senior Executive Service;

(ii) in one or more other positions in the civil service the level of duties and responsibilities of which are equivalent to the level of duties and responsibilities of positions in the Senior Executive Service; or

(iii) in any combination of such positions, except that not less than 2 years of such 7 years of service must be in the Senior Executive Service; and

(C) if the appointee is eligible for voluntary retirement with a right to an immediate annuity under section 8336 of this title.

Any period of assignment under section 3373 of this title, relating to assignments of employees to State and local governments, shall not be considered a period of service for the purpose of subparagraph (B) of this paragraph.

(3)(A) Any career appointee in an agency may be granted a sabbatical under this subsection only if the appointee agrees, as a condition of accepting the sabbatical, to serve in the civil service upon the completion of the sabbatical for a period of 2 consecutive years.

(B) Each agreement required under subparagraph (A) of this paragraph shall provide that in the event the career appointee fails to carry out the agreement (except for good and sufficient reason as determined by the head of the agency who granted the sabbatical) the appointee shall be liable to the United States for payment of all expenses (including salary) of the sabbatical. The amount shall be treated as a debt due the United States.

(d) The Office shall encourage and assist individuals to improve their skills and increase their contribution by service in a variety of agencies as well as by accepting temporary placements in State or local governments or in the private sector.

(Added Pub. L. 95–454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1163.)

PRIOR PROVISIONS

A prior section 3396, added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, which related to issuance of regulations, was renumbered as section 3406 of this

title by Pub. L. 95-454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

§ 3397. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95-454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1164.)

PRIOR PROVISIONS

A prior section 3397, added Pub. L. 95-437, § 3(a), Oct. 10, 1978, 92 Stat. 1058, which related to reports, was renumbered as section 3407 of this title by Pub. L. 95-454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

A prior section 3398, added Pub. L. 95-437, § 3(a), Oct. 10, 1978, 92 Stat. 1058, which related to representation by employee organizations of employees employed on a part-time career employment basis, was renumbered as section 3408 of this title by Pub. L. 95-454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

CHAPTER 34—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES

Sec.
3401. Definitions.
3402. Establishment of part-time career employment programs.
3403. Limitations.
3404. Personnel ceilings.
3405. Nonapplicability.
3406. Regulations.
3407. Reports.
3408. Employee organization representation.

AMENDMENTS

1978—Pub. L. 95-437, § 3(b), Oct. 10, 1978, 92 Stat. 1058, added items 3391 to 3398, which were renumbered 3401 to 3408 by Pub. L. 95-454, title IX, § 906(c)(1)(A), Oct. 13, 1978, 92 Stat. 1226 which section also substituted "chapter 34" for "subchapter VIII" in the heading.

§ 3401. Definitions

For the purpose of this chapter—

(1) "agency" means—

(A) an Executive agency;

(B) a military department;

(C) an agency in the judicial branch;

(D) the Library of Congress;

(E) the Botanic Garden; and

(F) the Office of the Architect of the Capitol; but does not include—

(i) a Government controlled corporation;

(ii) the Tennessee Valley Authority;

(iii) the Alaska Railroad;

(iv) the Virgin Island[1] Corporation;

(v) the Panama Canal Company;

(vi) the Federal Bureau of Investigation, Department of Justice;

(vii) the Central Intelligence Agency; and

(viii) the National Security Agency, Department of Defense; and

(2) "part-time career employment" means part-time employment of 16 to 32 hours a week under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to this section or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

(Added Pub. L. 95-437, § 3(a), Oct. 10, 1978, 92 Stat. 1056, § 3391, renumbered and amended Pub. L. 95-454, title IX, § 906(c)(1)(B), (2)(A), Oct. 13, 1978, 92 Stat. 1226.)

AMENDMENTS

1978—Pub. L. 95-454, § 906(c)(2)(A), substituted "chapter" for "subchapter".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95-437 provided that: "This Act [enacting this chapter, amending sections 8347, 8716, 8906, and 8913 of this title, and enacting provisions set out as notes under this section and sections 3407 and 8906 of this title] may be cited as the 'Federal Employees Part-Time Career Employment Act of 1978'."

CONGRESSIONAL FINDINGS AND PURPOSE

Section 2 of Pub. L. 95-437 provided that:

"(a) The Congress finds that—

"(1) many individuals in our society possess great productive potential which goes unused because they cannot meet the requirements of a standard workweek; and

"(2) part-time permanent employment—

"(A) provides older individuals with a gradual transition into retirement;

"(B) provides employment opportunities to handicapped individuals or others who require a reduced workweek;

"(C) provides parents opportunities to balance family responsibilities with the need for additional income;

"(D) benefits students who must finance their own education or vocational training;

"(E) benefits the Government, as an employer, by increasing productivity and job satisfaction, while lowering turnover rates and absenteeism, offering management more flexibility in meeting work requirements, and filling shortages in various occupations; and

"(F) benefits society by offering a needed alternative for those individuals who require or prefer shorter hours (despite the reduced income), thus increasing jobs available to reduce unemployment while retaining the skills of individuals who have training and experience.

"(b) The purpose of this Act [enacting this chapter, amending sections 8347, 8716, 8906, and 8913 of this title, and enacting provisions set out as notes under this section and sections 3407 and 8906 of this title] is to provide increased part-time career employment opportunities throughout the Federal Government."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8347, 8716, 8906, 8913 of this title.

§ 3402. Establishment of part-time career employment programs

(a)(1) In order to promote part-time career employment opportunities in all grade levels, the head of each agency, by regulation, shall establish and maintain a program for part-time career employment within such agency. Such regulations shall provide for—

(A) the review of positions which, after such positions become vacant, may be filled

[1] So in original. Probably should be "Islands".

on a part-time career employment basis (including the establishment of criteria to be used in identifying such positions);

(B) procedures and criteria to be used in connection with establishing or converting positions for part-time career employment, subject to the limitations of section 3403 of this title;

(C) annual goals for establishing or converting positions for part-time career employment, and a timetable setting forth interim and final deadlines for achieving such goals;

(D) a continuing review and evaluation of the part-time career employment program established under such regulations; and

(E) procedures for notifying the public of vacant part-time positions in such agency, utilizing facilities and funds otherwise available to such agency for the dissemination of information.

(2) The head of each agency shall provide for communication between, and coordination of the activities of, the individuals within such agency whose responsibilities relate to the part-time career employment program established within that agency.

(3) Regulations established under paragraph (1) of this subsection may provide for such exceptions as may be necessary to carry out the mission of the agency.

(b)(1) The Office of Personnel Management, by regulation, shall establish and maintain a program under which it shall, on the request of an agency, advise and assist such agency in the establishment and maintenance of its part-time career employment program under this chapter.

(2) The Office shall conduct a research and demonstration program with respect to part-time career employment within the Federal Government. In particular, such program shall be directed to—

(A) determining the extent to which part-time career employment may be used in filling positions which have not traditionally been open for such employment on any extensive basis, such as supervisory, managerial, and professional positions;

(B) determining the extent to which job-sharing arrangements may be established for various occupations and positions; and

(C) evaluating attitudes, benefits, costs, efficiency, and productivity associated with part-time career employment, as well as its various sociological effects as a mode of employment.

(Added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1056, § 3392, renumbered and amended Pub. L. 95–454, title IX, § 906(c)(1)(B), (2)(B), Oct. 13, 1978, 92 Stat. 1226.)

AMENDMENTS

1978—Subsec. (a)(1)(B). Pub. L. 95–454, § 906(c)(2)(B)(i), substituted "3403" for "3393".

Subsec. (b)(1). Pub. L. 95–454, § 906(c)(2)(B)(ii), substituted "Office of Personnel Management" for "Civil Service Commission", and "chapter" for "subchapter".

Subsec. (b)(2). Pub. L. 95–454, § 906(c)(2)(B)(iii), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3407 of this title.

§ 3403. Limitations

(a) An agency shall not abolish any position occupied by an employee in order to make the duties of such position available to be performed on a part-time career employment basis.

(b) Any person who is employed on a full-time basis in an agency shall not be required to accept part-time employment as a condition of continued employment.

(Added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, § 3393, renumbered Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3402 of this title.

§ 3404. Personnel ceilings

In administering any personnel ceiling applicable to an agency (or unit therein), an employee employed by such agency on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek. This section shall become effective on October 1, 1980.

(Added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, § 3394, renumbered Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.)

§ 3405. Nonapplicability

(a) If, on the date of enactment of this chapter, there is in effect with respect to positions within an agency a collective-bargaining agreement which establishes the number of hours of employment a week, then this chapter shall not apply to those positions.

(b) This chapter shall not require part-time career employment in positions the rate of basic pay for which is fixed at a rate equal to or greater than the minimum rate fixed for GS–16 of the General Schedule.

(Added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, § 3405, renumbered and amended Pub. L. 95–454, title IX, § 906(c)(1)(B), (2)(C), Oct. 13, 1978, 92 Stat. 1226, 1227.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsec. (a), is the date of the enactment of Pub. L. 95–437, which was approved Oct. 10, 1978.

GS–16 of the General Schedule, referred to in subsec. (b), is set out under section 5332 of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 906(c)(2)(C), substituted "chapter" for "subchapter" wherever appearing.

Subsec. (b). Pub. L. 95–454, § 906(c)(2)(C), substituted "chapter" for "subchapter".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3406. Regulations

Before any regulation is prescribed under this chapter, a copy of the proposed regulation shall be published in the Federal Register and an opportunity provided to interested parties to present written comment and, where practicable, oral comment. Initial regulations shall be prescribed not later than 180 days after the date of the enactment of this chapter.

(Added Pub. L. 95-437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, § 3396, renumbered and amended Pub. L. 95-454, title IX, § 906(c)(1)(B), (2)(C), Oct. 13, 1978, 92 Stat. 1226, 1227.)

REFERENCES IN TEXT

The date of the enactment of this chapter, referred to in text, is the date of the enactment of Pub. L. 95-437, which was approved Oct. 10, 1978.

AMENDMENTS

1978—Pub. L. 95-454, § 906(c)(2)(C), substituted "chapter" for "subchapter" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3407. Reports

(a) Each agency shall prepare and transmit on a biannual basis a report to the Office of Personnel Management on its activities under this subchapter, including—

(1) details on such agency's progress in meeting part-time career employment goals established under section 3402 of this title; and

(2) an explanation of any impediments experienced by such agency in meeting such goals or in otherwise carrying out the provisions of this chapter, together with a statement of the measures taken to overcome such impediments.

(b) The Office shall include in its annual report under section 1308 of this title a statement of its activities under this chapter, and a description and evaluation of the activities of agencies in carrying out the provisions of this chapter.

(Added Pub. L. 95-437, § 3(a), Oct. 10, 1978, 92 Stat. 1058, § 3397, renumbered and amended Pub. L. 95-454, title IX, § 906(c)(1)(B), (2)(D), (E), Oct. 13, 1978, 92 Stat. 1226, 1227.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(c)(2)(D), substituted "Office of Personnel Management" for "Civil Service Commission", "3402" for "3392" in par. (1), and "chapter" for "subchapter" in par. (2).

Subsec. (b). Pub. L. 95-454, § 906(c)(2)(E), substituted "Office" for "Commission", and "chapter" for "subchapter" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

EXTENSION OF PART-TIME CAREER EMPLOYMENT OPPORTUNITIES TO OLDER INDIVIDUALS, HANDICAPPED INDIVIDUALS, PARENTS, AND STUDENTS

Section 5 of Pub. L. 95-437, as amended by Pub. L. 95-454, title IX, § 906(c)(3), Oct. 13, 1978, 92 Stat. 1227, provided that: "Each report prepared by an agency under section 3407(a) of title 5, United States Code (as added by this Act), shall, to the extent practicable, indicate the extent to which part-time career employment opportunities have been extended by such agency during the period covered by such report to each group referred to in subparagraphs (A), (B), (C), and (D) of section 2(a)(2) of this Act [set out as a note under section 3401 of this title]."

§ 3408. Employee organization representation

If an employee organization has been accorded exclusive recognition with respect to a unit within an agency, then the employee organization shall be entitled to represent all employees within that unit employed on a part-time career employment basis.

(Added Pub. L. 95-437, § 3(a), Oct. 10, 1978, 92 Stat. 1058, § 3398, renumbered Pub. L. 95-454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.)

CHAPTER 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT

SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

Sec.
3591. Definitions.
3592. Removal from the Senior Executive Service.
3593. Reinstatement in the Senior Executive Service.
3594. Guaranteed placement in other personnel systems.
3595. Regulations.

AMENDMENTS

1978—Pub. L. 95-454, title IV, § 404(c), Oct. 13, 1978, 92 Stat. 1167, added subchapter V and items 3591 to 3595.

SUBCHAPTER I—RETENTION PREFERENCE

§ 3501. Definitions; application

[*See main edition for text of* (a)]

(b) Except as otherwise provided by this subsection and section 3504 of this title, this subchapter applies to each employee in or under an Executive agency. This subchapter does not apply to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the Senate or to a member of the Senior Executive Service.

(As amended Pub. L. 95-454, title IV, § 404(a), Oct. 13, 1978, 92 Stat. 1165.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-454 inserted reference to a member of the Senior Executive Service.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b) effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3502, 6303 of this title; title 10 section 1586; title 22 section 1438; title 38 sections 106, 4202.

§ 3502. Order of retention

(a) The Office of Personnel Management shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

(1) tenure of employment;

(2) military preference, subject to section 3501(a)(3) of this title;

(3) length of service; and

(4) efficiency or performance ratings.

In computing length of service, a competing employee—

[*See main edition for text of (A) to (C)*]

(b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

(c) An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees.

(As amended Pub. L. 95-454, title III, § 307(e), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1149, 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b). Pub. L. 95-454, § 307(e), substituted provisions relating to retention of a preference eligible with a compensable service-connected disability of 30 per cent or more, for provisions relating to retention of preference eligible employees on the basis of ratings.

Subsec. (c). Pub. L. 95-454, § 307(e), added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7512, 7521 of this title; title 10 section 1586; title 22 section 1438; title 32 section 709; title 38 sections 106, 4202.

§ 3503. Transfer of functions

(a) When a function is transferred from one agency to another, each competing employee in the function shall be transferred to the receiving agency for employment in a position for which he is qualified before the receiving agency may make an appointment from another source to that position.

(b) When one agency is replaced by another, each competing employee in the agency to be replaced shall be transferred to the replacing agency for employment in a position for which he is qualified before the replacing agency may make an appointment from another source to that position.

(As amended Pub. L. 95-454, title III, § 307(f), Oct. 13, 1978, 92 Stat. 1149.)

CODIFICATION

Amendment by Pub. L. 95-454 has substituted "competing employee" for "preference eligible employed" as the probable intent of Congress, notwithstanding the enacting language of section 307(f) of Pub. L. 95-454 requiring "competing employee" to be substituted for "preference eligible employee".

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 substituted "competing employee" for "preference eligible employed". See Codification note above.

Subsec. (b). Pub. L. 95-454 substituted "competing employee" for "preference eligible employed". See Codification note above.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 1586; title 22 section 1438; title 38 sections 106, 4202.

§ 3504. Preference eligibles; retention; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for retention in a position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the noti-

fication was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in the response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

(As amended Pub. L. 95–454, title III, § 307(g), title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1149, 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, §§ 307(g)(1), 906(a)(2), (3), designated existing provisions as subsec. (a) and, as designated, substituted "Office of Personnel Management" for "Civil Service Commission" and "Office" for "Commission".

Subsec. (b). Pub. L. 95–454, § 307(g)(2), added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3501 of this title; title 22 section 1438; title 38 sections 106, 4202.

SUBCHAPTER IV—REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION

§ 3584. Regulations

EX. ORD. NO. 11552. PROVIDING FOR DETAILS AND TRANSFERS OF FEDERAL EMPLOYEES TO INTERNATIONAL ORGANIZATIONS

Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[See main edition for text of first par., secs. 1 and 2]

SEC. 3. *Delegations.* (a) Except as otherwise provided in this order, there is hereby delegated to the Office of Personnel Management the authority vested in the President by sections 3582(b) and 3584 of title 5, United States Code.

[See main edition for text of (b) and sec. 4]

SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4314 of this title.

§ 3591. Definitions

For the purpose of this subchapter, "agency", "Senior Executive Service position", "senior executive", "career appointee", "limited term appointee", "limited emergency appointee", "noncareer appointee", and "general position" have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95–454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1165.)

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415(a)(1), (b), of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

§ 3592. Removal from the Senior Executive Service

(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

(1) during the 1-year period of probation under section 3393(d) of this title, or

(2) at any time for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title,

except that in the case of a removal under paragraph (2) of this subsection the career appointee shall, at least 15 days before the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board at which the career appointee may appear and present arguments, but such hearing shall not give the career appointee the right to initiate an action with the Board under section 7701 of this title, nor need the removal action be delayed as a result of the granting of such hearing.

(b)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

(A) within 120 days after an appointment of the head of the agency; or

(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

(i) is a noncareer appointee; and

(ii) has the authority to remove the career appointee.

(2) Paragraph (1) of this subsection does not apply with respect to—

(A) any removal under section 4314(b)(3) of this title; or

(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.

(Added Pub. L. 95–454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1165.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7542 of this title.

§ 3593. Reinstatement in the Senior Executive Service

(a) A former career appointee may be reinstated, without regard to section 3393 (b) and (c) of this title, to any Senior Executive Service

position for which the appointee is qualified if—

(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43 of this title.

(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

(Added Pub. L. 95-454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1166.)

§ 3594. Guaranteed placement in other personnel systems

(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(b) A career appointee—

(1) who has completed the probationary period under section 3393(d) of this title; and

(2) who is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(c)(1) For purposes of subsections (a) and (b) of this section—

(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS-15 or above of the General Schedule, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

(B) any career appointee placed under subsection (a) or (b) of this section shall be entitled to receive basic pay at the highest of—

(i) the rate of basic pay in effect for the position in which placed;

(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

(2) An employee who is receiving basic pay under paragraph (1)(B) (ii) or (iii) of this subsection is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under paragraph (1)(B)(i) of this subsection for the position in which the employee is placed.

(Added Pub. L. 95-454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1166.)

REFERENCES IN TEXT

GS-15 of the General Schedule, referred to in subsec. (c)(1)(A), is set out under section 5332 of this title.

§ 3595. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95-454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1167.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7542 of this title.

Subpart C—Employee Performance

CHAPTER 41—TRAINING

§ 4102. Exceptions; Presidential authority

[*See main edition for text of* (a)]

(b) The President, at any time in the public interest, may—

(1) except an agency or part thereof, or an employee or group or class of employees therein, from this chapter or a provision thereof (except this section); and

(2) withdraw an exception made under this subsection.

However, the President may not except the Office of Personnel Management from a provision of this chapter which vests in or imposes on the Commission a function, duty, or responsibility concerning any matter except the establishment, operation, and maintenance, in the same capacity as other agencies, of training programs and plans for its employees.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

REFERENCES IN TEXT

The term "Commission", meaning the Civil Service Commission, referred to in subsec. (b), was not amended by section 906(a)(3) of Pub. L. 95-454 by substitu-

tion of the term "Office", meaning the Office of Personnel Management, to reflect the general transfer of functions of the Civil Service Commission to the Office of Personnel Management, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of this title.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

EX. ORD. NO. 11895. DELEGATION OF PRESIDENTIAL AUTHORITY TO DESIGNATE INDIVIDUALS APPOINTED BY THE PRESIDENT TO RECEIVE TRAINING

Ex. Ord. No. 11895, Jan. 6, 1976, 41 F.R. 1465, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[*See main edition for text of first par.*]

SECTION 1. Except as provided in Section 2 of this Order, the Office of Personnel Management is hereby designated and empowered to exercise the authority vested in the President by Section 4102(a)(2)(B) of Title 5, United States Code, to designate individuals appointed by the President for training under Chapter 41 of Title 5, United States Code.

[*See main edition for text of secs. 2 and 3*]

§ 4103. Establishment of training programs

(a) In order to increase economy and efficiency in the operations of the agency and to raise the standards of performance by employees of their official duties to the maximum possible level of proficiency, the head of each agency, in conformity with this chapter, shall establish, operate, and maintain a program or programs, and a plan or plans thereunder, for the training of employees in or under the agency by, in, and through Government facilities and non-Government facilities. Each program, and plan thereunder, shall—

(1) conform to the principles, standards, and related requirements contained in the regulations prescribed under section 4118 of this title;

(2) provide for adequate administrative control by appropriate authority; and

(3) provide for the encouragement of self-training by employees by means of appropriate recognition of resultant increases in proficiency, skill, and capacity.

Two or more agencies jointly may operate under a training program.

(b)(1) Notwithstanding any other provision of this chapter, an agency may train any employee of the agency to prepare the employee for placement in another agency if the head of the agency determines that the employee will otherwise be separated under conditions which would entitle the employee to severance pay under section 5595 of this title.

(2) Before undertaking any training under this subsection, the head of the agency shall obtain verification from the Office of Personnel Management that there exists a reasonable expectation of placement in another agency.

(3) In selecting an employee for training under this subsection, the head of the agency shall consider—

(A) the extent to which the current skills, knowledge, and abilities of the employee may be utilized in the new position;

(B) the employee's capability to learn skills and acquire knowledge and abilities needed in the new position; and

(C) the benefits to the Government which would result from retaining the employee in the Federal service.

(As amended Pub. L. 95-454, title III, § 304, Oct. 13, 1978, 92 Stat. 1146.)

AMENDMENTS

1978—Pub. L. 95-454 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

EX. ORD. NO. 11348. FURTHER TRAINING OF GOVERNMENT EMPLOYEES

Ex. Ord. No. 11348, Apr. 20, 1967, 32 F.R. 6335, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

* * * * *

PART I—GENERAL

* * * * *

SEC. 103. The Office of Personnel Management shall provide leadership and guidance to insure that the policy set forth in section 102 is carried out.

PART II—OFFICE OF PERSONNEL MANAGEMENT RESPONSIBILITIES

SEC. 201. The Office of Personnel Management shall plan and promote the development, improvement, coordination, and evaluation of training in accordance with chapter 41 of Title 5, United States Code, and with the policy set forth in section 102 of this order.

SEC. 202. In carrying out its responsibilities under chapter 41 of Title 5, United States Code, and section 201 of this order, the Office shall:

* * * * *

PART III—AGENCY RESPONSIBILITIES AND OPERATIONS

* * * * *

SEC. 302. The head of each agency shall:

* * * * *

(e) Establish interagency training facilities in areas of substantive competence as arranged by the Office of Personnel Management; and

* * * * *

SEC. 303. In carrying out his responsibilities, the head of each agency shall, consonant with chapter 41 of Title 5, United States Code, this order, and regulations of the Office of Personnel Management:

* * * * *

(j) Approve the acceptance of any contributions, awards, or payments to employees authorized by section 401(b) of this order and regulations issued by the Office of Personnel Management.

PART IV—DELEGATIONS

SEC. 401. The following functions vested in the President are hereby delegated to the Office of Personnel Management:

* * * * *

EX. ORD. NO. 11451. PRESIDENT'S COMMISSION ON PERSONNEL INTERCHANGE

Ex. Ord. No. 11451, Jan. 19, 1969, 34 F.R. 921, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[See main edition for text of first four pars., secs. 1 and 2]

SEC. 3. *Federal Departments and Agencies.* (a) Each Federal department and agency shall cooperate with the Commission and shall furnish it with such assistance as the Chairman may request in connection with the Program.

(b) The head of each Federal department and agency shall designate a presidential appointee who is not a member of the Commission to serve as liaison to the Commission.

(c) The Office of Personnel Management shall provide the Commission with administrative services, staff support, and travel expenses, as authorized by law.

§ 4106. Non-Government facilities; amount of training limited

(a) The training of employees by, in, and through non-Government facilities under this chapter is subject to the following limitations:

[See main edition for text of (1) to (3)]

The Office of Personnel Management may prescribe other limitations, in accordance with the provisions and purposes of this chapter, concerning the time which may be spent by an employee in training.

(b) On recommendation of the head of an agency, the Office may waive, with respect to that agency or part thereof or one or more employees therein, all or any of the limitations covered by subsection (a) of this section, if the Office determines that the application of all or any of the limitations thereto is contrary to the public interest. The Office, in the public interest, may reimpose all or any of the limitations so waived.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission", wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 4113. Agency review of training needs; annual program reports

(a) The head of each agency, at least once every 3 years, shall review the needs and requirements of the agency for the training of employees under its jurisdiction. The Office of Personnel Management, on request of an agency, may assist the agency with the review. Information obtained or developed in a review shall be made available to the Office at its request.

(b) Each agency shall report annually to the Office, at such times and in such form as the Office prescribes, on its programs and plans for the training of employees under this chapter. The report shall set forth—

(1) such information concerning the expenditures of the agency in connection with training as the Office considers appropriate;

[See main edition for text of (2) to (5)]

(6) such other information as the agency or the Office considers appropriate.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsec. (b). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission", wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 4114. Non-Government facilities; review of training programs

The Office of Personnel Management, at the times and to the extent it considers necessary, shall review the operations, activities, and related transactions of each agency in connection with each agency program, and plan thereunder, for the training of its employees by, in, and through non-Government facilities under this chapter in order to determine whether the operations, activities, and related transactions comply with the programs and plans, the provisions and purposes of this chapter, and the principles, standards, and related requirements contained in the regulations prescribed under section 4118 of this title. Each agency, on request of the Office shall cooperate and assist in the review. If the Office finds that noncompliance exists in an agency, the Office, after consultation with the agency, shall certify to the head of the agency its recommendations for change of actions and procedures. If, after a reasonable time for placing its recommendations in effect, the Office finds that noncompliance continues to exist in the agency, the Office shall report the finding to the President for such action as he considers appropriate.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 4115. Collection of training information

The Office of Personnel Management, to the extent it considers appropriate in the public interest, may collect information concerning training programs, plans, and the methods inside and outside the Government. The Office, on request, may make the information available to an agency and to Congress.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 4116. Training program assistance

The Office of Personnel Management, on request of an agency, shall advise and assist in the establishment, operation, and maintenance of the training programs and plans of the agency under this chapter, to the extent of its facilities and personnel available for that purpose.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 4117. Administration

The Office of Personnel Management has the responsibility and authority for effective promotion and coordination of the training programs under this chapter and training operations thereunder. The functions, duties, and responsibilities of the Office under this chapter are subject to supervision and control by the President and review by Congress.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 4118. Regulations

(a) The Office of Personnel Management, after considering the needs and requirements of each agency for training its employees and after consulting with the agencies principally concerned, shall prescribe regulations containing the principles, standards, and related requirements for the programs, and plans thereunder, for the training of employees under this chapter, including requirements for coordination of and reasonable uniformity in the agency training programs and plans. The regulations shall provide for the maintenance of necessary information concerning the general conduct of the training activities of each agency, and such other information as is necessary to enable the President and Congress to discharge effectively their respective duties and responsibilities for supervision, control, and review of these training programs. The regulations also shall cover—

[*See main edition for text of (1) to (8)*]

(9) other matters considered appropriate or necessary by the Office to carry out the provisions of this chapter.

[*See main edition for text of (b)*]

(c) The Office, in accordance with this chapter, may revise, supplement, or abolish regulations prescribed under this section, and prescribe additional regulations.

(d) This section does not authorize the Office to prescribe the types and methods of intra-agency training or to regulate the details of intra-agency training programs.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsecs. (c), (d). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

CHAPTER 43—PERFORMANCE APPRAISAL

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
4301. Definitions.
4302. Establishment of performance appraisal systems.
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SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

4311. Definitions.
4312. Senior Executive Service performance appraisal systems.
4313. Criteria for performance appraisals.
4314. Ratings for performance appraisals.
4315. Regulations.

AMENDMENTS

1978—Pub. L. 95-454, title II, § 203(a), title IV, § 405(b), Oct. 13, 1978, 92 Stat. 1131, 1170, in the chapter heading substituted "Appraisal" for "Rating", added heading for subchapter I, in item 4302 substituted "Establishment of performance appraisal systems" for "Performance-rating plans; establishment of", in item 4303 substituted "Actions based on unacceptable performance" for "Performance-rating plans; requirements for", in item 4304 substituted "Responsibilities of Office of Personnel Management" for "Ratings for performance", in item 4305 substituted "Regulations" for "Review of ratings", struck out items 4306 to 4308 "Performance-rating plans; inspection of", "Other rating procedures prohibited", and "Regulations", respectively, and added subchapter II and items 4311 to 4315.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2108, 2302, 3502 of this title.

SUBCHAPTER I—GENERAL PROVISIONS[1]

§ 4301. Definitions

For the purpose of this subchapter—

(1) "agency" means—

(A) an Executive agency;

(B) the Administrative Office of the United States Courts; and

(C) the Government Printing Office;

but does not include—

(i) a Government corporation;

(ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

(iii) the General Accounting Office;

(2) "employee" means an individual employed in or under an agency, but does not include—

(A) an employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

(B) an individual in the Foreign Service of the United States;

(C) a physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans' Administration whose pay is fixed under chapter 73 of title 38;

(D) an administrative law judge appointed under section 3105 of this title;

(E) an individual in the Senior Executive Service;

(F) an individual appointed by the President; or

(G) an individual occupying a position not in the competitive service excluded from coverage of this subchapter by regulations of the Office of Personnel Management; and

(3) "unacceptable performance" means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position.

(As amended Pub. L. 95-251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, title II, § 203(a), Oct. 13, 1978, 92 Stat. 1131.)

AMENDMENTS

1978—Pub. L. 95-454 substituted provisions defining "agency", "employee", and "unacceptable performance" for purposes of this subchapter, for provisions defining "agency" and "employee" for purposes of this chapter.

Par. (2)(E). Pub. L. 95-251 substituted "administrative law judge" for "hearing examiner".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 4302. Establishment of performance appraisal systems

(a) Each agency shall develop one or more performance appraisal systems which—

(1) provide for periodic appraisals of job performance of employees;

(2) encourage employee participation in establishing performance standards; and

(3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees;

(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for—

(1) establishing performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria (which may include the extent of courtesy demonstrated to the public) related to the job in question for each employee or position under the system;

(2) as soon as practicable, but not later than October 1, 1981, with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period, communicating to each employee the performance standards and the critical elements of the employee's position;

(3) evaluating each employee during the appraisal period on such standards;

(4) recognizing and rewarding employees whose performance so warrants;

(5) assisting employees in improving unacceptable performance; and

(6) reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate acceptable performance.

(As amended Pub. L. 95-454, title II, § 203(a), Oct. 13, 1978, 92 Stat. 1132.)

AMENDMENTS

1978—Pub. L. 95-454 substituted in the section catchline "Establishment of performance appraisal systems" for "Performance-rating plans; establishment of" and substituted provisions relating to the establishment of a performance appraisal system, for

[1] Subchapter heading editorially added.

provisions relating to the establishment of performance-rating plans.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 4303. Actions based on unacceptable performance

(a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.

(b)(1) An employee whose reduction in grade or removal is proposed under this section is entitled to—

(A) 30 days' advance written notice of the proposed action which identifies—

(i) specific instances of unacceptable performance by the employee on which the proposed action is based; and

(ii) the critical elements of the employee's position involved in each instance of unacceptable performance;

(B) be represented by an attorney or other representative;

(C) a reasonable time to answer orally and in writing; and

(D) a written decision which—

(i) in the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and

(ii) unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.

(2) An agency may, under regulations prescribed by the head of such agency, extend the notice period under subsection (b)(1)(A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.

(c) The decision to retain, reduce in grade, or remove an employee—

(1) shall be made within 30 days after the date of expiration of the notice period, and

(2) in the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee—

(A) which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and

(B) for which the notice and other requirements of this section are complied with.

(d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided under subsection (b)(1)(A) of this section, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any agency record relating to the employee.

(e) Any employee who is a preference eligible or is in the competitive service and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701 of this title.

(f) This section does not apply to—

(1) the reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title,

(2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, or

(3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

(As amended Pub. L. 95-454, title II, § 203(a), Oct. 13, 1978, 92 Stat. 1133.)

AMENDMENTS

1978—Pub. L. 95-454 substituted in the section catchline "Actions based on unacceptable performance" for "Performance-rating plans; requirements for" and substituted provisions relating to actions based on unacceptable performance, for provisions relating to the requirements for performance-rating plans.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7121, 7512, 7701 of this title.

§ 4304. Responsibilities of the Office of Personnel Management

(a) The Office of Personnel Management shall make technical assistance available to agencies in the development of performance appraisal systems.

(b)(1) The Office shall review each performance appraisal system developed by any agency under this section and determine whether the performance appraisal system meets the requirements of this subchapter.

(2) The Comptroller General shall from time to time review on a selected basis performance appraisal systems established under this subchapter to determine the extent to which any such system meets the requirements of this subchapter and shall periodically report its findings to the Office and to the Congress.

(3) If the Office determines that a system does not meet the requirements of this subchapter (including regulations prescribed under section 4305), the Office shall direct the agency to implement an appropriate system or to correct operations under the system, and any such agency shall take any action so required.

(As amended Pub. L. 95-454, title II, § 203(a), Oct. 13, 1978, 92 Stat. 1134.)

AMENDMENTS

1978—Pub. L. 95-454 substituted in the section catchline "Responsibilities of the Office of Personnel Management" for "Ratings for performance" and substituted provisions relating to the responsibilities of the Office of Personnel Management under this subchapter, for provisions relating to ratings for performance.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 4305. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

(As amended Pub. L. 95-454, title II, § 203(a), Oct. 13, 1978, 92 Stat. 1134.)

AMENDMENTS

1978—Pub. L. 95-454 substituted in the section catchline "Regulations" for "Review of ratings" and substituted provisions relating to regulations to carry out this subchapter, for provisions relating to review of ratings.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4304 of this title.

[§§ 4306 to 4308. Omitted]

CODIFICATION

Sections 4306 to 4308, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 441, 442, were omitted in the general revision of this chapter by the Civil Service Reform Act of 1978, Pub. L. 95-454, § 203(a), Oct. 13, 1978, 92 Stat. 1131.

Section 4306 related to inspection of performance-rating plans.

Section 4307 related to prohibition of other rating procedures.

Section 4308 related to regulations for the administration of the chapter, and is covered by revised section 4305.

SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3592, 3593, 3594, 5384, 8336 of this title.

§ 4311. Definitions

For the purpose of this subchapter, "agency", "senior executive", and "career appointee" have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95-454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1167.)

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415(a)(1), (b), of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

§ 4312. Senior Executive Service performance appraisal systems

(a) Each agency shall, in accordance with standards established by the Office of Personnel Management, develop one or more performance appraisal systems designed to—

(1) permit the accurate evaluation of performance in any position on the basis of criteria which are related to the position and which specify the critical elements of the position;

(2) provide for systematic appraisals of performance of senior executives;

(3) encourage excellence in performance by senior executives; and

(4) provide a basis for making eligibility determinations for retention in the Senior Executive Service and for Senior Executive Service performance awards.

(b) Each performance appraisal system established by an agency under subsection (a) of this section shall provide—

(1) that, on or before the beginning of each rating period, performance requirements for each senior executive in the agency are established in consultation with the senior executive and communicated to the senior executive;

(2) that written appraisals of performance are based on the individual and organizational performance requirements established for the rating period involved; and

(3) that each senior executive in the agency is provided a copy of the appraisal and rating under section 4314 of this title and is given an opportunity to respond in writing and have the rating reviewed by an employee in a higher executive level in the agency before the rating becomes final.

(c)(1) The Office shall review each agency's performance appraisal system under this section, and determine whether the agency performance appraisal system meets the requirements of this subchapter.

(2) The Comptroller General shall from time to time review performance appraisal systems under this section to determine the extent to which any such system meets the requirements under this subchapter and shall periodically report its findings to the Office and to each House of the Congress.

(3) If the Office determines that an agency performance appraisal system does not meet the requirements under this subchapter (including regulations prescribed under section 4315), the agency shall take such corrective action as may be required by the Office.

(d) A senior executive may not appeal any appraisal and rating under any performance appraisal system under this section.

(Added Pub. L. 95-454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1167.)

§ 4313. Criteria for performance appraisals

Appraisals of performance in the Senior Executive Service shall be based on both individu-

al and organizational performance, taking into account such factors as—

(1) improvements in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

(2) cost efficiency;

(3) timeliness of performance;

(4) other indications of the effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible; and

(5) meeting affirmative action goals and achievement of equal employment opportunity requirements.

(Added Pub. L. 95–454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1168.)

§ 4314. Ratings for performance appraisals

(a) Each performance appraisal system shall provide for annual summary ratings of levels of performance as follows:

(1) one or more fully successful levels,

(2) a minimally satisfactory level, and

(3) an unsatisfactory level.

(b) Each performance appraisal system shall provide that—

(1) any appraisal and any rating under such system—

(A) are made only after review and evaluation by a performance review board established under subsection (c) of this section;

(B) are conducted at least annually, subject to the limitation of subsection (c)(3) of this section;

(C) in the case of a career appointee, may not be made within 120 days after the beginning of a new Presidential administration; and

(D) are based on performance during a performance appraisal period the duration of which shall be determined under guidelines established by the Office of Personnel Management, but which may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance;

(2) any career appointee receiving a rating at any of the fully successful levels under subsection (a)(1) of this section may be given a performance award under section 5384 of this title;

(3) any senior executive receiving an unsatisfactory rating under subsection (a)(3) of this section shall be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service, but any senior executive who receives 2 unsatisfactory ratings in any period of 5 consecutive years shall be removed from the Senior Executive Service; and

(4) any senior executive who twice in any period of 3 consecutive years receives less than fully successful ratings shall be removed from the Senior Executive Service.

(c)(1) Each agency shall establish, in accordance with regulations prescribed by the Office, one or more performance review boards, as appropriate. It is the function of the boards to make recommendations to the appropriate appointing authority of the agency relating to the performance of senior executives in the agency.

(2) The supervising official of the senior executive shall provide to the performance review board, an initial appraisal of the senior executive's performance. Before making any recommendation with respect to the senior executive, the board shall review any response by the senior executive to the initial appraisal and conduct such further review as the board finds necessary.

(3) Performance appraisals under this subchapter with respect to any senior executive shall be made by the appointing authority only after considering the recommendations by the performance review board with respect to such senior executive under paragraph (1) of this subsection.

(4) Members of performance review boards shall be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal. Notice of the appointment of an individual to serve as a member shall be published in the Federal Register.

(5) In the case of an appraisal of a career appointee, more than one-half of the members of the performance review board shall consist of career appointees. The requirement of the preceding sentence shall not apply in any case in which the Office determines that there exists an insufficient number of career appointees available to comply with the requirement.

(d) The Office shall include in each report submitted to each House of the Congress under section 3135 of this title a report of—

(1) the performance of any performance review board established under this section,

(2) the number of individuals removed from the Senior Executive Service under subchapter V of chapter 35 of this title for less than fully successful executive performance, and

(3) the number of performance awards under section 5384 of this title.

(Added Pub. L. 95–454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1169.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3395, 3592, 4312, 5384 of this title.

§ 4315. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95–454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1170.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4312 of this title.

CHAPTER 45—INCENTIVE AWARDS

Sec.
4507. Awarding of ranks in the Senior Executive Service.

AMENDMENTS

1978—Pub. L. 95–454, title IV, § 406(b), Oct. 13, 1978, 92 Stat. 1171, added item 4507.

§ 4501. Definitions

For the purpose of this chapter—

[*See main edition for text of (1)*]

(2) "employee" means—

(A) an employee as defined by section 2105 of this title, but does not include an employee covered by the merit pay system established under section 5402 of this title; and

[*See main edition for text of (B); (3)*]

(As amended Pub. L. 95–454, title V, § 503(a), Oct. 13, 1978, 92 Stat. 1183.)

AMENDMENTS

1978—Par. (2)(A). Pub. L. 95–454 inserted reference to an employee covered by the merit pay system established under section 5402 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective on the first day of the first applicable pay period which begins on or after Oct. 1, 1981, except it may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management, see section 504(a) of Pub. L. 95–454 set out as an Effective Date note under section 5401 of this title.

§ 4502. General provisions

(a) Except as provided by subsection (b) of this section, a cash award under this chapter may not exceed $10,000.

(b) When the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort for which the award is proposed is highly exceptional and unusually outstanding, a cash award in excess of $10,000 but not in excess of $25,000 may be granted with the approval of the Office.

[*See main edition for text of (c) and (d)*]

(As amended Pub. L. 95–454, title V, § 503(b), (c), Oct. 13, 1978, 92 Stat. 1183.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 503(b), substituted "$10,000" for "$5,000".

Subsec. (b). Pub. L. 95–454, § 503(c), substituted "Office of Personnel Management" for "Civil Service Commission", "$10,000" for "$5,000", and "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective on the first day of the first applicable pay period which begins on or after Oct. 1, 1981, except it may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management, see section 504(a) of Pub. L. 95–454 set out as an Effective Date note under section 5401 of this title.

§ 4503. Agency awards

The head of an agency may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who—

(1) by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

(2) performs a special act or service in the public interest in connection with or related to his official employment.

(As amended Pub. L. 95–454, title V, § 502(a), Oct. 13, 1978, 92 Stat. 1183.)

AMENDMENTS

1978—Par. (1). Pub. L. 95–454 inserted "or achieves a significant reduction in paperwork".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective on the first day of the first applicable pay period which begins on or after Oct. 1, 1981, except it may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management, see section 504(a) of Pub. L. 95–454 set out as an Effective Date note under section 5401 of this title.

§ 4504. Presidential awards

The President may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who—

(1) by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to his official employment.

A Presidential award may be in addition to an agency award under section 4503 of this title.

(As amended Pub. L. 95–454, title V, § 502(b), Oct. 13, 1978, 92 Stat. 1183.)

AMENDMENTS

1978—Par. (1). Pub. L. 95–454 inserted "or achieves a significant reduction in paperwork".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective on the first day of the first applicable pay period which begins on or after Oct. 1, 1981, except it may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management, see section 504(a) of Pub. L. 95–454 set out as an Effective Date note under section 5401 of this title.

EX. ORD. NO. 10717. PRESIDENT'S AWARD FOR DISTINGUISHED FEDERAL CIVILIAN SERVICE

Ex. Ord. No. 10717, June 27, 1957, 22 F.R. 4632, as amended by Ex. Ord. No. 10979, Dec. 12, 1961, 26 F.R. 11937; Ex. Ord. No. 11085, Feb. 22, 1963, 28 F.R. 1759; Ex. Ord. No. 12014, Oct. 19, 1977, 42 F.R. 56105; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

SECTION 1. There is hereby established an honorary award for the recognition of distinguished service by civilian officers and employees of the Federal Government. The award shall be known as the President's Award for Distinguished Federal Civilian Service, and shall consist of a gold medal, the design of which accompanies and is hereby made a part of this order, suspended on a ribbon of appropriate material and color, and accompanying appurtenances. Each medal shall be suitably inscribed, and an appropriate citation shall accompany each award.

SEC. 2. (a) The President's Award for Distinguished Federal Civilian Service shall be presented by the President to civilian officers or employees of the Federal Government for the best achievements having current impact in improving Government operations or serving the public interest. These achievements shall exemplify one or more of the following:

(1) Imagination in developing creative solutions to problems of government.

(2) Courage in persevering against great odds and difficulties.

(3) High ability in accomplishing extraordinary scientific or technological achievement, in providing outstanding leadership in planning, organizing, or directing a major program of unusual importance and complexity, or in performing an extraordinary act of credit to the Government and the country.

(4) Long and distinguished career service.

(b) The importance of the achievements to the Government and to the public interest shall be so outstanding that the officer or employee is deserving of greater public recognition than that which can be accorded by the head of the department or agency in which he is employed. Generally, not more than five awards shall be made in any one year. Presentation of the award shall be made at such times as the President may determine.

SEC. 3. The Director of the Office of Personnel Management shall advise and assist the President in selecting persons to receive this award. In performing this function, the Director shall carefully review nominations submitted pursuant to the provisions of Section 4 of this Order and decide which of them, if any, warrant presentation to the President. The Director shall thereupon transmit to the President the names of those persons who, in the opinion of the Director, merit the award, together with a statement of the reasons therefor. Recipients for the award shall be selected by the President.

SEC. 4. The form and procedures for making nominations for this award shall be prescribed by the Director of the Office of Personnel Management, in accord with the following principles:

(a) The Director shall be guided in the performance of this function by the provisions of Section 4504 and 4505 of Title 5 of the United States Code, and by additional criteria which the Director may prescribe.

(b) The Director shall not recommend any person for the award without the concurrence of the head of the agency in which that person was employed at the time of the achievement for which the award is recommended.

(c) Persons appointed by the President are not eligible for this award unless, in the opinion of the Office, they are currently serving in a career position.

§ 4506. Regulations

The Office of Personnel Management shall prescribe regulations and instructions under which the agency awards program set forth by this chapter shall be carried out.

(As amended Pub. L. 95–454, title V, § 503(d), Oct. 13, 1978, 92 Stat. 1184.)

AMENDMENTS

1978—Pub. L. 95–454 substituted "Office of Personnel Management shall" for "Civil Service Commission may".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective on the first day of the first applicable pay period which begins on or after Oct. 1, 1981, except it may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management, see section 504(a) of Pub. L. 95–454 set out as an Effective Date note under section 5401 of this title.

§ 4507. Awarding of ranks in the Senior Executive Service

(a) For the purpose of this section, "agency", "senior executive", and "career appointee" have the meanings set forth in section 3132(a) of this title.

(b) Each agency shall submit annually to the Office recommendations of career appointees in the agency to be awarded the rank of Meritorious Executive or Distinguished Executive. The recommendations may take into account the individual's performance over a period of years. The Office shall review such recommendations and provide to the President recommendations as to which of the agency recommended appointees should receive such rank.

(c) During any fiscal year, the President may, subject to subsection (d) of this section, award to any career appointee recommended by the Office the rank of—

(1) Meritorious Executive, for sustained accomplishment, or

(2) Distinguished Executive, for sustained extraordinary accomplishment.

A career appointee awarded a rank under paragraph (1) or (2) of this subsection shall not be entitled to be awarded that rank during the following 4 fiscal years.

(d) During any fiscal year—

(1) the number of career appointees awarded the rank of Meritorious Executive may not exceed 5 percent of the Senior Executive Service; and

(2) the number of career appointees awarded the rank of Distinguished Executive may not exceed 1 percent of the Senior Executive Service.

(e)(1) Receipt by a career appointee of the rank of Meritorious Executive entitles such individual to a lump-sum payment of $10,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.

(2) Receipt by a career appointee of the rank of Distinguished Executive entitles the individual to a lump-sum payment of $20,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.

(Added Pub. L. 95–454, title IV, § 406(a), Oct. 13, 1978, 92 Stat. 1170.)

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415(a)(1), (b), of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5383, 5384 of this title.

CHAPTER 47—PERSONNEL RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

Sec.
4701. Definitions.
4702. Research programs.
4703. Demonstration projects.
4704. Allocation of funds.

Sec.
4705. Reports.
4706. Regulations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1103 of this title.

§ 4701. Definitions

(a) For the purpose of this chapter—

(1) "agency" means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

(A) a Government corporation;

(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof which is designated by the President and which has as its principal function the conduct of foreign intelligence or counterintelligence activities; or

(C) the General Accounting Office;

(2) "employee" means an individual employed in or under an agency;

(3) "eligible" means an individual who has qualified for appointment in an agency and whose name has been entered on the appropriate register or list of eligibles;

(4) "demonstration project" means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management; and

(5) "research program" means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

(b) This subchapter[1] shall not apply to any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (5 U.S.C. 5108 note; 90 Stat. 2425).

(Added Pub. L. 95-454, title VI, § 601(a), Oct. 13, 1978, 92 Stat. 1185.)

REFERENCES IN TEXT

Section 201 of the Crime Control Act of 1976 (5 U.S.C. 5108 note; 90 Stat. 2425), referred to in subsec. (b), is section 201 of Pub. L. 94-503, title II, Oct. 15, 1976, 90 Stat. 2425, which is set out as a note under section 509 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Chapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 4702. Research programs

The Office of Personnel Management shall—

(1) establish and maintain (and assist in the establishment and maintenance of) research programs to study improved methods and technologies in Federal personnel management;

(2) evaluate the research programs established under paragraph (1) of this section;

(3) establish and maintain a program for the collection and public dissemination of information relating to personnel management research and for encouraging and facilitating the exchange of information among interested persons and entities; and

(4) carry out the preceding functions directly or through agreement or contract.

(Added Pub. L. 95-454, title VI, § 601(a), Oct. 13, 1978, 92 Stat. 1185.)

§ 4703. Demonstration projects

(a) Except as provided in this section, the Office of Personnel Management may, directly or through agreement or contract with one or more agencies and other public and private organizations, conduct and evaluate demonstration projects. Subject to the provisions of this section, the conducting of demonstration projects shall not be limited by any lack of specific authority under this title to take the action contemplated, or by any provision of this title or any rule or regulation prescribed under this title which is inconsistent with the action, including any law or regulation relating to—

(1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;

(2) the methods of classifying positions and compensating employees;

(3) the methods of assigning, reassigning, or promoting employees;

(4) the methods of disciplining employees;

(5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;

(6) the hours of work per day or per week;

(7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and

(8) the methods of reducing overall agency staff and grade levels.

(b) Before conducting or entering into any agreement or contract to conduct a demonstration project, the Office shall—

(1) develop a plan for such project which identifies—

(A) the purposes of the project;

(B) the types of employees or eligibles, categorized by occupational series, grade, or organizational unit;

(C) the number of employees or eligibles to be included, in the aggregate and by category;

(D) the methodology;

(E) the duration;

(F) the training to be provided;

(G) the anticipated costs;

(H) the methodology and criteria for evaluation;

(I) a specific description of any aspect of the project for which there is a lack of specific authority; and

(J) a specific citation to any provision of law, rule, or regulation which, if not waived

[1] So in original. Probably should read "chapter".

under this section, would prohibit the conducting of the project, or any part of the project as proposed;

(2) publish the plan in the Federal Register;

(3) submit the plan so published to public hearing;

(4) provide notification of the proposed project, at least 180 days in advance of the date any project proposed under this section is to take effect—

(A) to employees who are likely to be affected by the project; and

(B) to each House of the Congress;

(5) obtain approval from each agency involved of the final version of the plan; and

(6) provide each House of the Congress with a report at least 90 days in advance of the date the project is to take effect setting forth the final version of the plan as so approved.

(c) No demonstration project under this section may provide for a waiver of—

(1) any provision of chapter 63 or subpart G of this title;

(2)(A) any provision of law referred to in section 2302(b)(1) of this title; or

(B) any provision of law implementing any provision of law referred to in section 2302(b)(1) of this title by—

(i) providing for equal employment opportunity through affirmative action; or

(ii) providing any right or remedy available to any employee or applicant for employment in the civil service;

(3) any provision of chapter 15 or subchapter III of chapter 73 of this title;

(4) any rule or regulation prescribed under any provision of law referred to in paragraph (1), (2), or (3) of this subsection; or

(5) any provision of chapter 23 of this title, or any rule or regulation prescribed under this title, if such waiver is inconsistent with any merit system principle or any provision thereof relating to prohibited personnel practices.

(d)(1) Each demonstration project shall—

(A) involve not more than 5,000 individuals other than individuals in any control groups necessary to validate the results of the project; and

(B) terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue beyond the date to the extent necessary to validate the results of the project.

(2) Not more than 10 active demonstration projects may be in effect at any time.

(e) Subject to the terms of any written agreement or contract between the Office and an agency, a demonstration project involving the agency may be terminated by the Office, or the agency, if either determines that the project creates a substantial hardship on, or is not in the best interests of, the public, the Federal Government, employees, or eligibles.

(f) Employees within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of this title shall not be included within any project under subsection (a) of this section—

(1) if the project would violate a collective bargaining agreement (as defined in section 7103(8) of this title) between the agency and the labor organization, unless there is another written agreement with respect to the project between the agency and the organization permitting the inclusion; or

(2) if the project is not covered by such a collective bargaining agreement, until there has been consultation or negotiation, as appropriate, by the agency with the labor organization.

(g) Employees within any unit with respect to which a labor organization has not been accorded exclusive recognition under chapter 71 of this title shall not be included within any project under subsection (a) of this section unless there has been agency consultation regarding the project with the employees in the unit.

(h) The Office shall provide for an evaluation of the results of each demonstration project and its impact on improving public management.

(i) Upon request of the Director of the Office of Personnel Management, agencies shall cooperate with and assist the Office, to the extent practicable, in any evaluation undertaken under subsection (h) of this section and provide the Office with requested information and reports relating to the conducting of demonstration projects in their respective agencies.

(Added Pub. L. 95–454, title VI, § 601(a), Oct. 13, 1978, 92 Stat. 1186.)

§ 4704. Allocation of funds

Funds appropriated to the Office of Personnel Management for the purpose of this chapter may be allocated by the Office to any agency conducting demonstration projects or assisting the Office in conducting such projects. Funds so allocated shall remain available for such period as may be specified in appropriation Acts. No contract shall be entered into under this chapter unless the contract has been provided for in advance in appropriation Acts.

(Added Pub. L. 95–454, title VI, § 601(a), Oct. 13, 1978, 92 Stat. 1188.)

§ 4705. Reports

The Office of Personnel Management shall include in the annual report required by section 1308(a) of this title a summary of research programs and demonstration projects conducted during the year covered by the report, the effect of the programs and projects on improving public management and increasing Government efficiency, and recommendations of policies and procedures which will improve such management and efficiency.

(Added Pub. L. 95–454, title VI, § 601(a), Oct. 13, 1978, 92 Stat. 1188.)

§ 4706. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.

(Added Pub. L. 95-454, title VI, § 601(a), Oct. 13, 1978, 92 Stat. 1188.)

Subpart D—Pay and Allowances

CHAPTER 51—CLASSIFICATION

Sec.
5112. General authority of the Office of Personnel Management.

AMENDMENTS

1978—Pub. L. 95-454, title IX, § 906(a)(17), Oct. 13, 1978, 92 Stat. 1226, in item 5112 substituted "Office of Personnel Management" for "Civil Service Commission".

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3101, 3102, 3109, 3374, 5304, 5331, 5334, 5341, 5342, 5348, 5361, 5363, 5372, 5541, 5544, 5545, 7204 of this title; title 2 sections 60e-2, 60e-2a, 60e-2b, 60e-6, 162a, 166, 197, 293, 353, 356; title 4 section 142; title 7 sections 511m, 610, 1507, 1642, 1765a, 1981; title 8 section 1103; title 10 sections 4540, 7212, 9540; title 12 sections 1701c, 2405, 3012; title 13 section 23; title 15 sections 78d, 78s, 79z-5, 80a-45, 80b-18, 205i, 278a, 327, 634d, 714g, 714h, 715h, 717q, 1023, 1942, 2053, 2451; title 16 sections 81c, 410cc-36, 450jj-1, 460m, 470m, 590d, 793, 825i, 832i, 833h, 916*l*; title 18 section 4001; title 20 sections 74, 75f, 76dd, 80g, 80o, 241, 1089, 1102, 1145, 1221d, 1221e, 1417, 2106; title 21 section 1115; title 22 sections 272a, 277d-3, 277d-19, 280b, 280i, 280k, 287e, 287r, 289b, 290b, 886, 928, 1044, 2024, 2083, 2454, 2581, 2873; 3008; title 25 sections 2a, 305a, 633, 640d-11, 2011; title 26 sections 7471, 9010, 9040; title 28 sections 602, 625, 626; title 29 sections 172, 661, 676, 761a, 783, 954; title 30 sections 556, 664, 823; title 33 sections 569a, 939, 940, 984, 1325, 1374; title 35 sections 3, 7; title 38 sections 2003, 2014, 4107; title 40 sections 13b, 166b-1f, 166b-3, 174j-8, 609, 873; title 41 sections 38, 46, 104; title 42 sections 204, 217a, 300v-2, 907a, 1320a-4, 1563, 1731, 1855f, 1863, 1873, 1962a-4, 2000e-4, 2000g, 2201, 2473, 2942, 3525, 4276, 4365, 4372, 5042, 5149, 7231; title 43 sections 316n, 1616, 1731; title 44 section 2503; title 45 sections 154, 362; title 46 sections 1111, 1126; title 47 section 154; title 49 sections 231, 1322, 1343, 1441, 10363, 10383; title 50 sections 402, 404; title 50 App. sections 460, 2001, 2153, 2162, 2168, 2169, 2253.

§ 5102. Definitions; application

[*See main edition for text of* (a) *and* (b)]

(c) This chapter does not apply to—

[*See main edition for text of* (1) *to* (4)]

(5) members of the Metropolitan Police, the Fire Department of the District of Columbia, the United States Park Police, and the Executive Protective Service; and members of the police force of the National Zoological Park whose pay is fixed under section 5375 of this title;

[*See main edition for text of* (6) *to* (11)]

(12)(A) employees of an agency who are stationed in the Canal Zone; and

(B) on approval by the Office of Personnel Management of the request of an agency which has employees stationed in both the Republic of Panama and the Canal Zone, employees of the agency who are stationed in the Republic of Panama;

[*See main edition for text of* (13) *to* (27); (d)]

(As amended Pub. L. 95-454, title VIII, § 801(a)(3)(D), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1221, 1224.)

AMENDMENTS

1978—Subsec. (c)(5). Pub. L. 95-454, § 801(a)(3)(D), substituted "5375" for "5365".

Subsec. (c)(12)(B). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 801(a)(3)(D) of Pub. L. 95-454 effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 906(2)(2) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

ABOLITION OF THE ATOMIC ENERGY COMMISSION

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3327, 5101, 5103, 5331, 5341, 5342, 5348, 5349, 5361 of this title; title 10 sections 4540, 7212, 9540; title 20 section 903; title 29 section 218; title 31 section 665a.

§ 5103. Determination of applicability

The Office of Personnel Management shall determine finally the applicability of section 5102 of this title to specific positions and employees, except for positions and employees in the Office of the Architect of the Capitol.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5104. Basis for grading positions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5401, 7201 of this title; title 10 sections 1586, 4540, 7212, 9540; title 14 section 186.

§ 5105. Standards for classification of positions

(a) The Office of Personnel Management, after consulting the agencies, shall prepare standards for placing positions in their proper classes and grades. The Office may make such inquiries or investigations of the duties, respon-

sibilities, and qualification requirements of positions as it considers necessary for this purpose. The agencies, on request of the Office, shall furnish information for and cooperate in the preparation of the standards. In the standards, which shall be published in such form as the Office may determine, the Office shall—

(1) define the various classes of positions in terms of duties, responsibilities, and qualification requirements;

(2) establish the official class titles; and

(3) set forth the grades in which the classes have been placed by the Office.

(b) The Office, after consulting the agencies to the extent considered necessary, shall revise, supplement, or abolish existing standards, or prepare new standards, so that, as nearly as may be practicable, positions existing at any given time will be covered by current published standards.

[*See main edition for text of* (c)]

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

Subsec. (b). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5107. Classification of positions

Except as otherwise provided by this chapter, each agency shall place each position under its jurisdiction in its appropriate class and grade in conformance with standards published by the Office of Personnel Management or, if no published standards apply directly, consistently with published standards. When facts warrant, an agency may change a position which it has placed in a class or grade under this section from that class or grade to another class or grade. Subject to subchapter VI of chapter 53 of this title, these actions of an agency are the basis for pay and personnel transactions until changed by certificate of the Office.

(As amended Pub. L. 95-454, title VIII, § 801(a)(3)(E), title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1222, 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission", "Office" for "Commission", and "subchapter VI of chapter 53" for "section 5337".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 803(a)(3)(E) of Pub. L. 95-454, substituting reference to subchapter VI of chapter 53 for reference to section 5337, effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 906(a)(2), (3) of Pub. L. 95-454, substituting reference to Office of Personnel Management for reference to Civil Service Commission, effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5108. Classification of positions at GS-16, 17, and 18

(a) A majority of the Civil Service Commissioners may establish, and from time to time revise, the maximum number of positions (not to exceed an aggregate of 3362, in addition to any professional engineering positions primarily concerned with research and development and professional positions in the physical and natural sciences and medicine which may be placed in these grades, and in addition to 340 administrative law judge positions under section 3105 of this title which may be placed in GS-16 and 9 such positions which may be placed in GS-17) which may be placed in GS-16, 17, and 18 at any one time. However, under this authority, not to exceed 25 percent of the aggregate number may be placed in GS-17 and not to exceed 12 percent of the aggregate number may be placed in GS-18. A position may be placed in GS-16, 17, or 18 only by action of, or after prior approval, by a majority of the Civil Service Commissioners.

[*See main edition for text of* (b)]

(c) In addition to the number of positions authorized by subsection (a) of this section—

[*See main edition for text of* (1) *and* (2)]

(3) the Director of the Administrative Office of the United States Courts, subject to the standards and procedures prescribed by this chapter, may place a total of 15 positions in GS-16, 17, and 18;

[*See main edition for text of* (4) *to* (7)]

(8) the Attorney General, without regard to any other provision of this section, may place a total of 45 positions in GS-16, 17, and 18;

[*See main edition for text of* (9) *to* (16); (d) *to* (g)]

(As amended Pub. L. 95-91, title VII, § 710(b), Aug. 4, 1977, 91 Stat. 609; Pub. L. 95-190, § 11(a), Nov. 16, 1977, 91 Stat. 1398; Pub. L. 95-219, § 3(c), Dec. 28, 1977, 91 Stat. 1614; Pub. L. 95-251, § 1, Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-486, § 10, Oct. 20, 1978, 92 Stat. 1634; Pub. L. 95-612, § 3(b), Nov. 8, 1978, 92 Stat. 3091; Pub. L. 95-624, § 22, Nov. 9, 1978, 92 Stat. 3466.)

AMENDMENT OF SUBSEC. (a)

Pub. L. 95-630, title V, §§ 502(c), 509, Nov. 10, 1978, 92 Stat. 3681, 3683, provided that effective upon the expiration of 120 days after Nov. 10, 1978, subsec. (a) is amended by substituting "3,310" for "3,301".

AMENDMENT OF SUBSEC. (c)(17)

Pub. L. 95-563, §§ 14(g), 16, Nov. 1, 1978, 92 Stat. 2390, 2391, provided that effective with respect to contracts entered into 120 days after Nov. 1, 1978 and, at the election of the contractor, with respect to any claim

pending at such time before the contracting officer or initiated thereafter, par. (17) is added to subsec. (c) to read as follows:

(17) the heads of executive departments or agencies in which boards of contract appeals are established pursuant to the Contract Disputes Act of 1978, and subject to the standards and procedures prescribed by this chapter, but without regard to subsection (d) of this section, may place additional positions, not to exceed seventy in number, in GS-16, GS-17, and GS-18 for the independent quasi-judicial determination of contract disputes, with the allocation of such positions among such executive departments and agencies determined by the Administrator for Federal Procurement Policy on the basis of relative case load.

AMENDMENT OF SUBSECS. (a) AND (c) TO (g)

Pub. L. 95-454, title IV, §§ 414(a)(1)(A), (C), (D), 415(a)(3), Oct. 13, 1978, 92 Stat. 1177, 1179, provided that 180 days after Oct. 13, 1978, subsecs. (a) and (c) to (g) are amended to read as follows:

(a) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum numbers of positions (not to exceed an aggregate of 10,777) which may at any one time be placed in—

(i) GS-16, 17, and 18; and

(ii) the Senior Executive Service, in accordance with section 3133 of this title.

A position may be placed in GS-16, 17, or 18, only by action of the Director of the Office of Personnel Management. The authority of the Director under this subsection shall be carried out by the President in the case of positions proposed to be placed in GS-16, 17, and 18 in the Federal Bureau of Investigation.

(c) In addition to the number of positions authorized by subsection (a) of this section—

(1) the Comptroller General of the United States, subject to the procedures prescribed by this section, may place a total of 90 positions in the General Accounting Office in GS-16, 17, and 18;

(2) the Director of the Administrative Office of the United States Courts, subject to the standards and procedures prescribed by this chapter, may place a total of 15 positions in GS-16, 17, and 18; and

(3) the Chief Judge of the United States Tax Court, without regard to this chapter (except section 5114), may place a total of 5 positions in GS-16, 17, and 18.

[(4) to (16) Repealed. Pub. L. 95-454, title IV, § 414(a)(1)(A)(i), Oct. 13, 1978, 92 Stat. 1177.]

[(d) to (g) Repealed. Pub. L. 95-454, title IV, § 414(a)(1)(A)(ii), Oct. 13, 1978, 92 Stat. 1177.]

REFERENCES IN TEXT

GS-16, 17, and 18, referred to in text, are contained in the General Schedule which is set out under section 5332 of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-612 substituted "3362" for "3301".

Pub. L. 95-251 substituted "340 administrative law judge" for "240 hearing examiner".

Subsec. (c)(3). Pub. L. 95-486 added provision subjecting the Director of the Administrative Office of the United States Courts to the standards and procedures prescribed by this chapter and substituted provision authorizing placement of 15 positions in GS-16, 17, and 18 for provision authorizing placement of 4 positions in GS-17.

Subsec. (c)(8). Pub. L. 95-624 substituted "45" for "32".

1977—Subsec. (a). Pub. L. 95-219 substituted "3301" for "3293".

Pub. L. 95-190 substituted "3293" for "3243".

Pub. L. 95-91 substituted "3243" for "2754".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) by Pub. L. 95-612 effective Oct. 1, 1978, or some later date related to availability of funds under appropriation acts authorized by appropriations authorization, see section 7 of Pub. L. 95-612, set out as an Effective Date of 1978 Amendment note under section 822a of Title 31, Money and Finance.

ADDITIONAL GS-16, GS-17, AND GS-18 POSITIONS; SOURCE FOR APPOINTMENTS; ELIGIBILITY OF APPOINTEES; TERMINATION OF AUTHORITY ON LEAVING POSITIONS; DETERMINATION OF AGGREGATE NUMBER OF POSITIONS AUTHORIZED FOR PLACEMENT IN SUCH GRADES

Section 3(a) and (c) of Pub. L. 95-612 provided as follows:

"(a)(1) Subject to the provisions of chapter 51 of title 5, United States Code, but notwithstanding the last two sentences of section 5108(a) of such title, the Secretary may place at GS-16, GS-17, and GS-18, no more than 61 positions of the positions subject to the limitation of the first sentence of section 5108(a) of such title.

"(2) A person may be appointed to a position placed at GS-16, GS-17, or GS-18 under the authority of paragraph (1) only if such person, immediately before the effective date of this Act [see Effective Date of 1978 Amendment note under section 822a of Title 31], held a position or has reemployment rights to a position—

"(A) the duties of which were comparable to those of the position to which he is to be appointed; and

"(B) for which the compensation derived from the stabilization fund established under section 10 of the Gold Reserve Act of 1934 (31 U.S.C. 822a).

Appointments made upder this paragraph may be made without regard to the provisions of section 3324 of title 5, United States Code, relating to the approval by the Civil Service Commission of appointments to GS-16, GS-17, and GS-18.

"(3) The Secretary's authority under this subsection with respect to any position shall cease when the person first appointed to such position under paragraph (2) leaves such position.

"(c) For purposes of determining the aggregate number of positions which may be placed in GS-16, GS-17, or GS-18 under sections 5108(a) of title 5, United States Code, a position established under subsection (a) shall be deemed a GS-16 position."

TERMINATION OF AUTHORITY TO PLACE POSITIONS IN GS-16, 17, OR 18 OF THE GENERAL SCHEDULE

Section 414(a)(1)(B) of Pub. L. 95-454 provided that: "Notwithstanding any other provision of law (other than section 5108 of such title 5 [this section]), the authority granted to an agency (as defined in section 5102(a)(1) of such title 5 [section 5102 of this title]) under any such provision to place one or more positions in GS-16, 17, or 18 of the General Schedule, is hereby terminated."

LIMITATIONS ON EXECUTIVE POSITIONS NOT TO APPLY TO INDIVIDUALS OCCUPYING THOSE POSITIONS ON OCTOBER 12, 1978

Section 414(a)(3) of Pub. L. 95-454 provided that:

"(A) The provisions of paragraphs (1) and (2) of this subsection [amending this section and section 3104 of this title] shall not apply with respect to any position so long as the individual occupying such position on the day before the date of the enactment of this Act [Oct. 13, 1978] continues to occupy such position.

"(B) The Director—

"(i) in establishing under section 5108 of title 5, United States Code, the maximum number of positions which may be placed in GS–16, 17, and 18 of the General Schedule, and

"(ii) in establishing under section 3104 of such title 5 the maximum number of scientific or professional positions which may be established,

shall take into account positions to which subparagraph (A) of this paragraph applies."

ADDITIONAL POSITIONS IN OFFICE OF MANAGEMENT AND BUDGET

Pub. L. 95–26, title I, May 4, 1977, 91 Stat. 94, provided: "That the Director [of the Office of Management and Budget] may place a total of five (5) positions, in GS–16, 17, and 18 and that such positions are in addition to total number of positions authorized to be placed in such grades by section 5108 of title 5".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3324, 5109, 5114 of this title; title 2 section 166; title 10 sections 4540, 7212, 9540; title 15 section 2053; title 20 sections 1221e, 1221f; title 21 section 1115; title 22 sections 2193, 2385, 2454; title 29 sections 661, 761a, 1137; title 30 section 1211; title 42 sections 3774, 7231; title 45 section 231f.

§ 5109. Positions classified by statute

[See main edition for text of (a)]

(b) The position held by the employee appointed under section 7802(b) of the Internal Revenue Code of 1954 is classified at GS–18, and is in addition to the number of positions authorized by section 5108(a) of this title.

(As amended Pub. L. 95–454, title IX, § 906(b), Oct. 13, 1978, 92 Stat. 1226.)

REFERENCES IN TEXT

GS–14 and GS–18, referred to in subsecs. (a) and (b), are contained in the General Schedule which is set out under section 5332 of this title.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–454, § 906(b), redesignated former subsec. (c) as (b). Former subsec. (b), which related to classification of position held by an employee appointed under section 1104(a)(2) of this title, was struck out.

Subsec. (c). Pub. L. 95–454, § 906(b)(2), redesignated former subsec. (c) as (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5110. Review of classification of positions

(a) The Office of Personnel Management, from time to time, shall review such number of positions in each agency as will enable the Office to determine whether the agency is placing positions in classes and grades in conformance with or consistently with published standards.

(b) When the Office finds under subsection (a) of this section that a position is not placed in its proper class and grade in conformance with published standards or that a position for which there is no published standard is not placed in the class and grade consistently with published standards, it shall, after consultation with appropriate officials of the agency concerned, place the position in its appropriate class and grade and shall certify this action to the agency. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(As amended Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsec. (b). Pub. L. 95–454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5111. Revocation and restoration of authority to classify positions

(a) When the Office of Personnel Management finds that an agency is not placing positions in classes and grades in conformance with or consistently with published standards, it may revoke or suspend the authority granted to the agency by section 5107 of this title and require that prior approval of the Office be secured before an action placing a position in a class and grade becomes effective for payroll and other personnel purposes. The Office may limit the revocation or suspension to—

[See main edition for text of (1) to (6)]

(b) After revocation or suspension, the Office may restore the authority to the extent that it is satisfied that later actions placing positions in classes and grades will be in conformance with or consistent with published standards.

(As amended Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

Subsec. (b). Pub. L. 95–454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5112. General authority of the Office of Personnel Management

(a) Notwithstanding section 5107 of this title, the Office of Personnel Management may—

[*See main edition for text of (1) to (4)*]

The Office shall certify to the agency concerned its action under paragraph (2) or (4) of this subsection. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(b) An employee affected or an agency may request at any time that the Office exercise the authority granted to it by subsection (a) of this section and the Office shall act on the request.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), (17), Oct. 13, 1978, 92 Stat. 1224, 1226.)

AMENDMENTS

1978—Pub. L. 95-454, § 906(a)(17), in the section catchline substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (a). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsec. (b). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5366 of this title; title 10 sections 4540, 7212, 9540.

§ 5113. Classification records

The Office of Personnel Management may—

(1) prescribe the form in which each agency shall record the duties and responsibilities of positions and the places where these records shall be maintained;

(2) examine these or other pertinent records of the agency; and

(3) interview employees of the agency who have knowledge of the duties and responsibilities of positions and information as to the reasons for placing a position in a class or grade.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5114. Reports; positions in GS-16, 17, and 18

(a) The Office of Personnel Management, with respect to positions under section 5108(a) of this title, the head of the agency concerned, with respect to positions under sections 5108(b), (c) and 5109(b) of this title, and the appropriate authority, with respect to positions under jurisdiction of the authority which are allocated to or placed in GS-16, 17, and 18, including positions so allocated or placed on a temporary or present incumbency basis, under reorganization plan or statute, except sections 5108 and 5109 of this title, shall submit, so long as the reorganization plan or statute remains in effect, to Congress, not later than February 1 of each year, a report setting forth—

[*See main edition for text of (1) to (3)*]

(4) such other information as the Office, the head of the agency, or other appropriate authority submitting the report may consider appropriate or as may be required by Congress or a committee thereof.

This subsection does not require the resubmission of information required by paragraphs (2) and (3) of this subsection which has been reported under this subsection and which remains unchanged.

(b) When the Office, the head of the agency, or other appropriate authority considers full public disclosure of any or all of the items specified by subsection (a) of this section to be detrimental to the national security, the Office, the head of the agency, or authority may—

[*See main edition for text of (1) to (3)*]

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

REFERENCES IN TEXT

GS-16, 17, and 18, referred to in subsec. (a), are contained in the General Schedule which is set out under section 5332 of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsec. (b). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5115. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this chapter, except sections 5109 and 5114.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

CHAPTER 53—PAY RATES AND SYSTEMS

SUBCHAPTER III—GENERAL SCHEDULE PAY RATES

Sec.
[5337. Repealed.]

SUBCHAPTER IV—PREVAILING RATE SYSTEMS

[5345. Repealed.]

SUBCHAPTER VI—GRADE AND PAY RETENTION

5361. Definitions.
5362. Grade retention following a change of positions or reclassification.
5363. Pay retention.
5364. Remedial actions.
5365. Regulations.
5366. Appeals.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

5371. Scientific and professional positions.
5372. Administrative law judges.
5373. Limitation on pay fixed by administrative action.
5374. Miscellaneous positions in the executive branch.
5375. Police force of National Zoological Park.

SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

5381. Definitions.
5382. Establishment and adjustment of rates of pay for the Senior Executive Service.
5383. Setting individual senior executive pay.
5384. Performance awards in the Senior Executive Service.
5385. Regulations.

AMENDMENTS

1978—Pub. L. 95–454, title IV, § 407(b), title VIII, § 801(a)(3)(B)(i), (ii), Oct. 13, 1978, 92 Stat. 1172, 1221, struck out items 5337 "Pay saving" and 5345 "Retained rate of pay on reduction in grade or reassignment", added subchapter VI and items 5361 to 5366, redesignated former subchapter VI and items 5361 to 5365 as subchapter VII and items 5371 to 5375, respectively, and added subchapter VIII and items 5381 to 5385.

Pub. L. 95–251, § 2(c)(4), Mar. 27, 1978, 92 Stat. 184, substituted "Administrative law judges" for "Hearing examiners" in item 5362.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5363, 5402 of this title; title 15 section 770; title 18 section 3153; title 42 sections 5872, 7292.

SUBCHAPTER I—PAY COMPARABILITY SYSTEM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 42 section 7211.

§ 5303. Higher minimum rates; Presidential authority

(a) When the President finds that the pay rates in private enterprise for one or more occupations in one or more areas or locations are so substantially above the pay rates of statutory pay schedules as to handicap significantly the Government's recruitment or retention of well-qualified individuals in positions paid under—

[See main edition for text of (1) to (4)]

he may establish for the areas or locations higher minimum rates of basic pay for one or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all step rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum pay rate prescribed by statute for the grade or level. The President may authorize the exercise of the authority conferred on him by this section by the Office of Personnel Management or, in the case of individuals not subject to the provisions of this title governing appointment in the competitive service, by such other agency as he may designate.

[See main edition for text of (b) to (d)]

(As amended Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3326, 5363 of this title; title 42 section 294t.

§ 5304. Presidential policies and regulations

The functions, duties, and regulations of the agencies and the Office of Personnel Management with respect to this subchapter, subchapter III of this chapter, chapter 51 of this title, chapter 14 of title 22, and the provisions of chapter 73 of title 38 relating to employees in the Department of Medicine and Surgery, Veterans' Administration, are subject to such policies and regulations as the President may prescribe. Among other things, the policies and regulations of the President may provide for—

[See main edition for text of (1) to (5)]

(As amended Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95–454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

EX. ORD. NO. 11721. FEDERAL PAY ADMINISTRATION

Ex. Ord. No. 11721, May 23, 1973, 38 F.R. 13717, as amended by Ex. Ord. No. 12004, July 20, 1977, 42 F.R. 37527; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by sections 5303, 5304, and 5305 of title 5, United States Code, and

as President of the United States, it is hereby ordered as follows:

* * * * *

PART II—ANNUAL PAY REVIEW

Section 201. The Secretary of Labor, the Director of the Office of Management and Budget, and the Director of the Office of Personnel Management are hereby designated to serve jointly as the President's agent under section 5305 of title 5, United States Code, and shall be known in this capacity as the President's Pay Agent.

* * * * *

Sec. 203. The following agencies are designated under section 5305(q) of title 5, United States Code, to prescribe the rules necessary to convert the rates of basic pay or salaries of officers and employees to the new pay rates as adjusted for each statutory pay system under section 5305 of title 5, United States Code:

(i) General Schedule—the Office of Personnel Management;

* * * * *

Sec. 204. (a) The Advisory Committee on Federal Pay shall advise the President of its own opinion on any unresolved issues referred to it by the President's Pay Agent or the Federal Employees Pay Council. The Advisory Committee shall inform the President's Pay Agent and the Federal Employees Pay Council of its opinion on such issues as soon as practicable. To facilitate the exercise of this authority and the early resolution of such issues, the Advisory Committee shall attend, or be represented at, meetings between the President's Pay Agent and the Federal Employees Pay Council, and moderate and direct the discussion.

(b) The President's Pay Agent, in its annual report to the President pursuant to section 5305 of title 5, United States Code, shall include a full discussion of each issue upon which the Advisory Committee has submitted, in accordance with subsection (a), an opinion.

PART III—SPECIAL RATES FOR RECRUITMENT AND RETENTION

Section 301(a). The Office of Personnel Management is hereby designated to exercise—

* * * * *

(b) Before exercising these functions for positions compensated under the Foreign Service schedules or under the schedules for physicians, dentists, and nurses in the Department of Medicine and Surgery of the Veterans Administration, the Office of Personnel Management shall consult with the head of the agency concerned.

Sec. 302(a). Before establishing higher rates of pay under section 5303(a) of title 5, United States Code, the Office of Personnel Management shall consider whether—

* * * * *

(b) The Office of Personnel Management may not establish higher rates for all positions in a statutory grade or level in a given area unless the Office determines that adequate recruitment and retention cannot be achieved by establishment of higher rates for certain occupations or groups of occupations.

Sec. 303. The Office of Personnel Management shall review, at least annually, higher rates of pay established under section 5303(a) of title 5, United States Code, and shall continue, abolish, or revise the higher rates in consideration of the facts and pertinent criteria under the law and this order.

* * * * *

PART IV—GENERAL SCHEDULE SYSTEM

Section 401(a). Heads of agencies shall ensure that agency managers and supervisors at all levels use the position classification plan of the General Schedule system as a tool for effective and efficient human resources utilization.

(b) The Office of Personnel Management shall revoke the position classification authority of an agency under the General Schedule whenever the Office finds, in connection with its regular evaluation, or otherwise, that an agency has failed to classify its positions in accordance with or consistently with applicable standards.

Sec. 402. The Office of Personnel Management shall issue such regulations and standards as may be necessary to ensure that only those employees whose work is of an acceptable level of competence receive periodic step-increases under the provisions of section 5335 of title 5, United States Code.

Sec. 403(a). The Office of Personnel Management shall require each agency employing personnel under the General Schedule to establish a plan for granting additional step-increases in recognition of high quality performance under section 5336 of title 5, United States Code, and shall require that the plans (1) be as simple as practicable, (2) provide for delegation of authority to an appropriate management level, (3) seek to ensure fairness to all employees, and (4) provide for informing employees, at least annually, of the number of additional step-increases granted in their agencies.

(b) The Office of Personnel Management shall (1) establish such regulations and standards as it deems appropriate for agency plans, (2) aid and advise agencies in the formulation and administration of the plans, and (3) evaluate the plans and their operation to ensure that step-increases are granted in a manner that is fair to employees and provides motivation for high quality performance.

Sec. 404. The Office of Personnel Management, in prescribing regulations for higher rates of pay under section 5333(b) of title 5, United States Code, for employees having responsibility for supervision of prevailing-rate employees, shall give effect to the following:

* * * * *

§ 5305. Annual pay reports and adjustments

PERCENTAGE LIMITATION ON ADJUSTMENT OF RATE OF SALARY OR BASIC PAY ON FISCAL YEAR BASIS; COMPENSATION FOR PURPOSES OF EMPLOYEE BENEFITS

Pub. L. 95-429, title VI, § 614, Oct. 10, 1978, 92 Stat. 1018, provided that:

"(a) No part of any of the funds appropriated for the fiscal year ending September 30, 1979, by this Act or any other Act, may be used to pay the salary or pay of any individual in any office or position in an amount which exceeds the rate of salary or basic pay payable for such office or position on September 30, 1978, by more than 5.5 percent, as a result of any adjustments which take effect during such fiscal year under—

"(1) section 5305 of title 5, United States Code;

"(2) any other provision of law if such adjustment is determined by reference to such section 5305; or

"(3) section 5343 of title 5, United States Code, if such adjustment is granted pursuant to a wage survey (but only with respect to prevailing rate employees described in section 5342(a)(2)(A) of that title).

"(b) For the purpose of administering any provision of law, rule, or regulation which provides premium pay, retirement, life insurance, or other employee benefit, which requires any deduction or contribution,

or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay."

EX. ORD. NO. 11639. PAY ADJUSTMENTS FOR FEDERAL PREVAILING RATE SYSTEMS

Ex. Ord. No. 11639, Jan. 11, 1972, 37 F.R. 521, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[See main edition for text of first par.]

SECTION 1. The head of each executive agency or military department authorized to fix by administrative action the rate of basic pay for a position or employee under subchapter IV of chapter 53 of title 5 of the United States Code [this subchapter], shall fix any such rate in accordance with instructions issued by the Office of Personnel Management (hereinafter referred to as the Office) under the authority of this order.

SEC. 2. (a) The Office is hereby authorized and directed to issue to the heads of executive agencies and military departments instructions on the fixing of rates of basic pay for positions and employees covered by section 1 of this order.

(b) In issuing instructions under this order, the Office shall maintain consistency in each pay schedule adjustment with the fiscal and economic policies of the United States, including the policies and pay increase guidelines issued by the Pay Board established under Executive Order No. 11627 of October 15, 1971. No pay schedule adjustment shall exceed such guidelines, except where (i) a tandem relationship exists between a Federal pay schedule for a specialized employee unit and pay increases granted in a specialized activity in the private sector, (ii) the Pay Board has permitted a pay increase for the specialized activity in the private sector which is in excess of the guidelines, and (iii) it is determined that a comparable increase is essential to the continued operation of the Government service concerned.

SEC. 3. The instructions issued by the Office under this order may (i) prescribe definitions of the terms used herein, (ii) redelegate to the head of an executive agency or military department any of the Office's authority under this order, and (iii) contain such other provisions as the Office determines to be necessary and appropriate to carry out the purposes of this order.

SEC. 4. (a) The Office may, in administering this order, utilize such services of other executive agencies and military departments as may be available and appropriate.

(b) On request of the Office, an executive agency or military department is authorized and directed, consistent with law, to furnish the Office with information which the Office may require in carrying out its responsibilities under this order.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5301, 5307, 5318, 5382, 5402 of this title; title 2 sections 31, 60a–1, 60a–2, 84a–1; title 3 section 104; title 28 section 461.

§ 5306. Advisory Committee on Federal Pay

REFERENCES IN TEXT

Section 5703 of this title, referred to in subsec. (g), was amended generally by Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 85, and as so amended does not contain a subsec. (b).

§ 5308. Pay limitation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5301, 5382 of this title.

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5374 of this title; title 18 section 207; title 22 sections 866, 867; title 31 section 42a; title 40 App. section 101; title 42 sections 3535, 4276; title 44 section 303.

§ 5311. The Executive Schedule

(a) The Executive Schedule, which is divided into five pay levels, is the basic pay schedule for positions, other than Senior Executive Service positions, to which this subchapter applies.

(b)(1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Director shall determine the number and classification of executive level positions in existence in the executive branch on that date of enactment, and shall publish the determination in the Federal Register. Effective beginning on the date of the publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

(2) For the purpose of this subsection, "executive level position" means—

(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions under section 5316 of this title, or

(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title;

but does not include any Senior Executive Service position, as defined in section 3132(a) of this title.

(As amended Pub. L. 95–454, title IV, §§ 408(b)(1), 414(b)(1), Oct. 13, 1978, 92 Stat. 1173, 1178.)

AMENDMENTS

1978—Pub. L. 95–454, § 408(b)(1), inserted reference to Senior Executive Service positions.

Subsec. (a). Pub. L. 95–454, § 414(b)(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 95–454, § 414(b)(1), added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

PLAN FOR AUTHORIZING EXECUTIVE LEVEL POSITIONS IN EXECUTIVE BRANCH; PRESIDENTIAL SUBMISSION TO CONGRESS

Section 414(b)(2) of Pub. L. 95–454 provided that: "The President shall transmit to the Congress by January 1, 1980, a plan for authorizing executive level positions in the executive branch which shall include the maximum number of executive level positions necessary by level and a justification for the positions."

§ 5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined

with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

[*See main edition for text of (1) to (13)*]

(14) Secretary of Energy.

(As amended Pub. L. 95-91, title VII, § 710(c), Aug. 4, 1977, 91 Stat. 609.)

1978 INCREASES IN SALARIES

Salaries of positions at Level I increased to $69,600 per annum, effective in the first pay period beginning on or after Oct. 1, 1978, see Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, set out as a note under section 5332 of this title. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $66,000.

AMENDMENTS

1977—Par. (14). Pub. L. 95-91 added par. (14).

MAXIMUM RATE OF SALARY OR BASIC PAY IN LEGISLATIVE, EXECUTIVE, AND JUDICIAL BRANCHES FOR FISCAL YEAR ENDING SEPTEMBER 30, 1979, FOR POSITIONS EQUAL OR ABOVE LEVEL V OF EXECUTIVE SCHEDULE

Limitations on use of funds for fiscal year ending Sept. 30, 1979, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal or above Level V of the Executive Schedule, see section 304 of Pub. L. 95-391 and section 613 of Pub. L. 95-429, set out as a note under section 5318 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1723a; title 39 section 1003; title 42 sections 7211, 7291; title 45 sections 543, 712; title 47 section 396.

§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

(1) Deputy Secretary of Defense.

[*See main edition for text of (2) to (21)*]

(22) Deputy Secretary of Energy.

[*See main edition for text of (23)*]

(24) Director of the Office of Personnel Management.

(As amended Pub. L. 95-91, title VII, § 710(d), Aug. 4, 1977, 91 Stat. 609; Pub. L. 95-140, § 3(d)(1), Oct. 21, 1977, 91 Stat. 1173; Pub. L. 95-454, title II, § 201(b)(1), Oct. 13, 1978, 92 Stat. 1121.)

1978 INCREASES IN SALARIES

Salaries of positions at Level II increased to $60,700 per annum, effective in the first pay period beginning on or after Oct. 1, 1978, see Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, set out as a note under section 5332 of this title. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $57,500.

AMENDMENTS

1978—Par. (24). Pub. L. 95-454 added par. (24).

1977—Par. (1). Pub. L. 95-140 substituted "Deputy Secretary of Defense" for "Deputy Secretaries of Defense (2)".

Par. (22). Pub. L. 95-91 substituted "Deputy Secretary of Energy" for "Administrator of Energy Research and Development Administration".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

MAXIMUM RATE OF SALARY OR BASIC PAY IN LEGISLATIVE, EXECUTIVE, AND JUDICIAL BRANCHES FOR FISCAL YEAR ENDING SEPTEMBER 30, 1979, FOR POSITIONS EQUAL OR ABOVE LEVEL V OF EXECUTIVE SCHEDULE

Limitations on use of funds for fiscal year ending Sept. 30, 1979, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal or above Level V of the Executive Schedule, see section 304 of Pub. L. 95-391 and section 613 of Pub. L. 95-429, set out as a note under section 5318 of this title.

DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE

The Director of the Federal Bureau of Investigation, Department of Justice to receive compensation at the rate prescribed for level II of the Federal Executive Salary Schedule [this section], effective as of the day following the date on which the person holding such office on June 19, 1968 ceases to serve as Director, see section 1101 of Pub. L. 90-351, June 19, 1968, 82 Stat. 236, set out as a note under section 532 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8704 of this title; title 3 sections 105, 106, 108; title 22 section 866; title 23 section 303; title 42 sections 210, 1864, 4346, 6612, 7132, 7211, 7291, 7293.

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

[*See main edition for text of (1) to (8)*]

(9) Under Secretary of State for Political Affairs and Under Secretary of State for Economic Affairs and an Under Secretary of State for Coordinating Security Assistance Programs and Under Secretary of State for Management.

[*See main edition for text of (10) to (16)*]

(17) Chairman of the Merit Systems Protection Board.

[*See main edition for text of (18) to (20)*]

(21) Chairman, Federal Energy Regulatory Commission.

[*See main edition for text of (22) to (31)*]

(32) Under Secretaries of Defense (2).

[*See main edition for text of (33) to (59)*]

(60) Under Secretary, Department of Energy.

[*See main edition for text of (61) to (65)*]

(66) Associate Attorney General.

(66) Chairman, Federal Mine Safety and Health Review Commission.

(66) Chairman, National Credit Union Administration Board.

(68)[1] Deputy Director of the Office of Personnel Management.

(69) Under Secretary of Agriculture for International Affairs and Commodity Programs.

(As amended Pub. L. 95-91, title VII, § 710(e), Aug. 4, 1977, 91 Stat. 609; Pub. L. 95-139, § 3, Oct. 19, 1977, 91 Stat. 1171; Pub. L. 95-140, § 3(d)(2), Oct. 21, 1977, 91 Stat. 1173; Pub. L. 95-164, title III, § 302(c)(1), Nov. 9, 1977, 91 Stat. 1320; Pub. L. 95-426, title I, § 114(b)(1), Oct. 7, 1978, 92 Stat. 969; Pub. L. 95-454, title II, §§ 201(b)(2), 202(c)(1), Oct. 13, 1978, 92 Stat. 1121, 1131; Pub. L. 95-501, title V, § 501(b), Oct. 21, 1978, 92 Stat. 1691; Pub. L. 95-630, title V, § 502(d), Nov. 10, 1978, 92 Stat. 3681.)

1978 INCREASES IN SALARIES

Salaries of positions at Level III increased to $55,400 per annum, effective in the first pay period beginning on or after Oct. 1, 1978, see Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, set out as a note under section 5332 of this title. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $52,500.

AMENDMENTS

1978—Par. (9). Pub. L. 95-426 added "and Under Secretary of State for Management".

Par. (17). Pub. L. 95-454, § 202(c)(1), substituted "Merit Systems Protection Board" for "United States Civil Service Commission".

Par. (66). Pub. L. 95-630 added par. (66), relating to Chairman, National Credit Union Administration Board.

Par. (68). Pub. L. 95-454, § 201(b)(2), added par. (68).

Par. (69). Pub. L. 95-501 added par. (69) relating to the Under Secretary of Agriculture for International Affairs and Commodity Programs.

1977—Par. (21). Pub. L. 95-91 substituted "Federal Energy Regulatory Commission" for "Federal Power Commission".

Par. (32). Pub. L. 95-140 substituted "Under Secretaries of Defense (2)" for "Director of Defense Research and Engineering, Department of Defense".

Par. (60). Pub. L. 95-91 substituted "Under Secretary, Department of Energy" for "Deputy Administrator, Energy Research and Development Administration".

Par. (66). Pub. L. 95-164 added par. (66), relating to Chairman, Federal Mine Safety and Health Review Commission.

Pub. L. 95-139 added par. (66), relating to Associate Attorney General.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-630 effective upon expiration of 120 days after Nov. 10, 1978, see section 509 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 1752 of Title 12, Banks and Banking.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Section 114(c) of Pub. L. 95-426 provided that: "The amendments made by this section [amending this section, section 5315 of this title and section 2652 of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as a note under section 2652 of Title 22] shall take effect on October 1, 1978."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95-164, set out as an Effective Date of 1977 Amendment note under section 801 of Title 30, Mineral Lands and Mining.

MAXIMUM RATE OF SALARY OR BASIC PAY IN LEGISLATIVE, EXECUTIVE, AND JUDICIAL BRANCHES FOR FISCAL YEAR ENDING SEPTEMBER 30, 1979, FOR POSITIONS EQUAL OR ABOVE LEVEL V OF EXECUTIVE SCHEDULE

Limitations on use of funds for fiscal year ending Sept. 30, 1979, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal or above Level V of the Executive Schedule, see section 304 of Pub. L. 95-391 and section 613 of Pub. L. 95-429, set out as a note under section 5318 of this title.

TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board and the Chairman thereof (referred to in par. (16)) were terminated or transferred by section 1551 of Title 49, Transportation, effective in part on Dec. 31, 1981, in part on Jan. 1, 1983, and in part on Jan. 1, 1985.

DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE

The Director of the Federal Bureau of Investigation, Department of Justice to receive compensation at the rate prescribed for level II of the Federal Executive Salary Schedule [section 5313 of this title], effective as of the day following the date on which the person holding such office on June 19, 1968 ceases to serve as Director, see section 1101 of Pub. L. 90-351, set out as a note under section 532 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 60a-1, 282b, 288, 474, 601; title 3 sections 105, 106, 107; title 15 section 205l; title 22 section 866; title 28 section 591; title 38 section 4107; title 42 sections 1864a, 5041, 5871, 5872, 6612, 7132, 7134, 7211, 7291, 7293; title 50 App. section 2169.

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

[(1) Repealed. Pub. L. 95-105, title I, § 109(d)(1), Aug. 17, 1977, 91 Stat. 847.]

[*See main edition for text of (2) to (9)*]

[(10) Repealed. Pub. L. 95-426, title I, § 114(b)(2), Oct. 7, 1978, 92 Stat. 969.]

[*See main edition for text of (11)*]

(12) Assistant Secretaries of Commerce (8).

[1] So in original. No par. (67) has been designated.

[*See main edition for text of (13) to (21)*]

(22) Assistant Secretaries of State (13).

[*See main edition for text of (23) to (49)*]

(50) Special Representative for Arms Control and Disarmament Negotiations, United States Arms Control and Disarmament Agency.

[*See main edition for text of (51)*]

[(52), (53) Repealed. Pub. L. 95-88, title I, § 124(b), Aug. 3, 1977, 91 Stat. 542.]

[*See main edition for text of (54) to (59)*]

(60) Members, Federal Energy Regulatory Commission.

[*See main edition for text of (61) to (65)*]

(66) Members, Merit Systems Protection Board.

[*See main edition for text of (67) to (92)*]

(93) Members, National Credit Union Administration Board (2).

[*See main edition for text of (94) to (101)*]

[(102) Repealed. Pub. L. 95-91, title VII, § 710(f), Aug. 4, 1977, 91 Stat. 609.]

[*See main edition for text of (103) to (113)*]

(114) Assistant Secretaries of Energy (8).

(115) General Counsel of the Department of Energy.

(116) Administrator, Economic Regulatory Administration, Department of Energy.

(117) Administrator, Energy Information Administration, Department of Energy.

(118) Inspector General, Department of Energy.

(119) Director, Office of Energy Research, Department of Energy.

(120) Assistant Secretary of Labor for Mine Safety and Health.

(121) Members, Federal Mine Safety and Health Review Commission.

(122) President, National Consumer Cooperative Bank.

(122) Assistant Secretary for International Narcotics Matters, Department of State.

(122) Inspector General, Department of Health, Education, and Welfare.

(123) Director, Office of Self-Help Development and Technical Assistance, National Consumer Cooperative Bank.

(123) Inspector General, Department of Agriculture.

(123) Special Counsel of the Merit Systems Protection Board.

(124) Inspector General, Department of Housing and Urban Development.

(124) Chairman, Federal Labor Relations Authority.

(125) Inspector General, Department of Labor.

(126) Inspector General, Department of Transportation.

(127) Inspector General, Veterans' Administration.

(As amended Pub. L. 95-88, title I, § 124(b), Aug. 3, 1977, 91 Stat. 542; Pub. L. 95-91, title VII, § 710(f), Aug. 4, 1977, 91 Stat. 609; Pub. L. 95-105, title I, § 109(d), Aug. 17, 1977, 91 Stat. 847; Pub. L. 95-108, § 2(b), Aug. 17, 1977, 91 Stat. 871; Pub. L. 95-164, title III, § 302(b), Nov. 9, 1977, 91 Stat. 1319; Pub. L. 95-173, § 9(b), Nov. 12, 1977, 91 Stat. 1360; Pub. L. 95-351, title III, § 302, Aug. 20, 1978, 92 Stat. 514; Pub. L. 95-426, title I, §§ 114(b)(2), 115(b)(1), Oct. 7, 1978, 92 Stat. 969; Pub. L. 95-452, § 10(a), Oct. 12, 1978, 92 Stat. 1108; Pub. L. 95-454, title II, §§ 202(c)(2), (3), title VII, § 703(d), Oct. 13, 1978, 92 Stat. 1131, 1217; Pub. L. 95-630, title V, § 502(e), Nov. 10, 1978, 92 Stat. 3681.)

1978 INCREASES IN SALARIES

Salaries of positions at Level IV increased to $52,800 per annum, effective in the first pay period beginning on or after Oct. 1, 1978, see Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, set out as a note under section 5332 of this title. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $50,000.

AMENDMENTS

1978—Par. (10). Pub. L. 95-426 § 114(b)(2), struck out par. (10) "Deputy Under Secretary of State".

Par. (66). Pub. L. 95-454, § 202(c)(2), substituted "Merit Systems Protection Board" for "United States Civil Service Commission".

Par. (93). Pub. L. 95-630 substituted "Members, National Credit Union Administration Board (2)" for "Administrator of the National Credit Union Administration".

Par. (122). Pub. L. 95-452 added par. (122), relating to Inspector General, Department of Health, Education, and Welfare.

Pub. L. 95-426, § 115(b)(1), added par. (122), relating to Assistant Secretary for International Narcotics Matters, Department of State.

Pub. L. 95-351 added par. (122), relating to President, National Consumer Cooperative Bank.

Par. (123). Pub. L. 95-454, § 202(c)(3), added par. (123), relating to the Special Counsel of the Merit Systems Protection Board.

Pub. L. 95-452 added par. (123), relating to Inspector General, Department of Agriculture.

Pub. L. 95-351 added par. (123), relating to Director, Office of Self-Help Development and Technical Assistance, National Consumer Cooperative Bank.

Par. (124). Pub. L. 95-454, § 703(d), added par. (124), relating to the Chairman of the Federal Labor Relations Authority.

Pub. L. 95-452 added par. (124), relating to Inspector General, Department of Housing and Urban Development.

Pars. (125) to (127). Pub. L. 95-452 added pars. (125) to (127).

1977—Par. (1). Pub. L. 95-105, § 109(d)(1), struck out par. (1) "Administrator, Bureau of Security and Consular Affairs, Department of State".

Par. (12). Pub. L. 95-173 increased from six to eight the number of authorized Assistant Secretaries of Commerce.

Par. (22). Pub. L. 95-105, § 109(d)(2), substituted "(13)" for "(11)".

Par. (50). Pub. L. 95-108 added par. (50). A prior par. (50), relating to the General Manager of the Atomic Energy Commission, was repealed by Pub. L. 93-438, title III, § 310(3), Oct. 11, 1974, 88 Stat. 1253.

Pars. (52), (53). Pub. L. 95-88 struck out par. (52) "Inspector General, Foreign Assistance" and par. (53) "Deputy Inspector General, Foreign Assistance".

Par. (60). Pub. L. 95-91 substituted "Federal Energy Regulatory Commission" for "Federal Power Commission".

Par. (102). Pub. L. 95-91 struck out par. (102) "Assistant Administrators, Energy Research and Development Administration (6)".

Pars. (114) to (119). Pub. L. 95-91 added pars. (114) to (119).

Pars. (120), (121). Pub. L. 95-164 added pars. (120) and (121).

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-630 effective upon expiration of 120 days after Nov. 10, 1978, see section 509 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 1752 of Title 12, Banks and Banking.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Amendment by Pub. L. 95-452 effective on Oct. 1, 1978, see section 12 of Pub. L. 95-452 set out in the Appendix to this title.

Repeal of par. (10) by section 114(b)(2) of Pub. L. 95-426 effective Oct. 1, 1978, see section 114(c) of Pub. L. 95-426, set out as an Effective Date of 1978 Amendment note under section 5314 of this title.

Section 115(b)(2) of Pub. L. 95-426 provided that: "The amendment made by paragraph (1) of this subsection [adding par. (122) of this section] shall take effect on October 1, 1978."

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95-164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95-164, set out as an Effective Date of 1977 Amendment note under section 801 of Title 30, Mineral Lands and Mining.

Repeal of pars. (52) and (53) by Pub. L. 95-88 effective July 1, 1978, see section 124(c) of Pub. L. 95-88, set out as an Effective Date of 1977 Amendment note under section 2384 of Title 22, Foreign Relations and Intercourse.

MAXIMUM RATE OF SALARY OR BASIC PAY IN LEGISLATIVE, EXECUTIVE, AND JUDICIAL BRANCHES FOR FISCAL YEAR ENDING SEPTEMBER 30, 1979, FOR POSITIONS EQUAL OR ABOVE LEVEL V OF EXECUTIVE SCHEDULES

Limitations on use of funds for fiscal year ending Sept. 30, 1979, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal or above Level V of the Executive Schedule, see section 304 of Pub. L. 95-391 and section 613 of Pub. L. 95-429, set out as a note under section 5318 of this title.

TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board and the members thereof (referred to in par. (54)) were terminated or transferred by section 1551 of Title 49, Transportation, effective in part on Dec. 31, 1981, in part on Jan. 1, 1983, and in part on Jan. 1, 1985.

ABOLITION OF ONE OFFICE OF ASSISTANT SECRETARY OF STATE

One of the offices of Assistant Secretary of State provided for in par. (22) of this section was abolished by Reorg. Plan No. 2 of 1977, § 9(a)(2), 42 F.R. 62461, 91 Stat. 1639, set out in the Appendix to this title, effective on or before July 1, 1978, at such time as specified by the President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5317 of this title; title 2 sections 285e, 286e, 288; 437c, 474, 601; title 15 sections 790b, 2204; title 20 section 1221b; title 22 sections 286a, 290f, 866, 867; title 23 section 303; title 28 sections 548, 591, 594; title 30 sections 1121, 1211; title 31 sections 51a, 52b; title 38 section 4107; title 42 sections 1975b, 3525, 4346, 4532, 5041, 5553, 5871, 5872, 7002, 7132, 7133, 7134, 7135, 7136, 7138, 7139, 7141, 7211, 7291, 7293; title 44 section 303; title 50 App. section 2168.

§ 5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

[See main edition for text of (1) to (10)]

(11) Associate Administrators of the Small Business Administration (4).

[See main edition for text of (12) to (98)]

[(99) Repealed. Pub. L. 95-454, title II, § 202(c)(4), Oct. 13, 1978, 92 Stat. 1131.]

[See main edition for text of (100) to (121)]

(122) Associate Directors of the Office of Personnel Management (5).

[See main edition for text of (123) to (134)]

(135) Executive Director, Advisory Council on Historic Preservation.

(135) Deputy Inspector General, Department of Energy.

(136) Additional Officers, Department of Energy (14).

[See main edition for text of (137) to (139)]

(140) Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(141) Associate Administrator, Office of Juvenile Justice and Delinquency Prevention of the Law Enforcement Assistance Administration.

(141) Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

(142) Assistant Administrators (3), National Oceanic and Atmospheric Administration.

(143) General Counsel, National Oceanic and Atmospheric Administration.

(144) Deputy Inspector General, Department of Health, Education, and Welfare.

(145) Inspector General, Department of Commerce.

(145) Members, Federal Labor Relations Authority (2) and its General Counsel.

(146) Inspector General, Department of the Interior.

(146) Director of the Office of Government Ethics.

(147) Inspector General, Community Services Administration.

(148) Inspector General, Environmental Protection Agency.

(149) Inspector General, General Services Administration.

(150) Inspector General, National Aeronautics and Space Administration.

(151) Inspector General, Small Business Administration.

(As amended Pub. L. 95-89, title II, § 209, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95-91, title VII, § 710(g), Aug. 4, 1977, 91 Stat. 609; Pub. L. 95-115, § 3(a)(6), Oct. 3, 1977, 91 Stat. 1049; Pub. L. 95-219, § 3(b), Dec. 28, 1977, 91 Stat. 1614; Pub. L. 95-452, § 10(b), Oct. 12, 1978, 92 Stat. 1108; Pub. L. 95-454, title II, §§ 201(b)(3), 202(c)(4), title VII, § 703(e), Oct. 13, 1978, 92 Stat. 1121, 1131, 1217; Pub. L. 95-521, title IV, § 406, Oct. 26, 1978, 92 Stat. 1864.)

1978 INCREASES IN SALARIES

Salaries of positions at Level V increased to $50,100 per annum, effective in the first pay period beginning on or after Oct. 1, 1978, see Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, set out as a note under section 5332 of this title. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $47,500.

AMENDMENTS

1978—Par. (99). Pub. L. 95-454, § 202(c)(4), struck out par. (99) relating to the Executive Director of the United States Civil Service Commission.

Par. (122). Pub. L. 95-454, § 201(b)(3), added par. (122).

Par. (144). Pub. L. 95-452, § 10(b), added par. (144).

Par. (145). Pub. L. 95-454, § 703(e), added par. (145), relating to the Members and General Counsel of the Federal Labor Relations Authority.

Pub. L. 95-452 added par. (145), relating to Inspector General, Department of Commerce.

Par. (146). Pub. L. 95-521 added par. (146) relating to the Director of the Office of Government Ethics.

Pub. L. 95-452 added par. (146), relating to Inspector General, Department of the Interior.

Pars. (147) to (151). Pub. L. 95-452 added pars. (147) to (151).

1977—Par. (11). Pub. L. 95-89 increased from 3 to 4 the number of Associate Administrators of the Small Business Administration.

Par. (135). Pub. L. 95-91 substituted "Deputy Inspector General, Department of Energy" for "General Counsel, Energy Research and Development Administration", now covered in section 5315 par. (115) General Counsel of the Department of Energy.

Par. (136). Pub. L. 95-91 substituted "Department of Energy (14)" for "Energy Research and Development Administration (8)".

Par. (140). Pub. L. 95-219 substituted "Assistant" for "Associate".

Par. (141). Pub. L. 95-219 added par. (141), relating to Assistant Administrator for Fisheries.

Pub. L. 95-115 added par. (141), relating to Associate Administrator Office of Juvenile Justice and Delinquency Prevention.

Pars. (142), (143). Pub. L. 95-219 added pars. (142), (143).

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Amendment by Pub. L. 95-452 effective on Oct. 1, 1978, see section 12 of Pub. L. 95-452 set out in the Appendix to this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective on Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date note under section 5601 of Title 42, The Public Health and Welfare.

MAXIMUM RATE OF SALARY OR BASIC PAY IN LEGISLATIVE, EXECUTIVE, AND JUDICIAL BRANCHES FOR FISCAL YEAR ENDING SEPTEMBER 30, 1979, FOR POSITIONS EQUAL OR ABOVE LEVEL V OF EXECUTIVE SCHEDULE

Limitations on use of funds for fiscal year ending Sept. 30, 1979, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal or above level V of the Executive Schedule, see section 304 of Pub. L. 95-391 and section 613 of Pub. L. 95-429, set out as a note under section 5318 of this title.

COMPENSATION OF DEPUTY ASSISTANT SECRETARY OF COMMERCE FOR COMMUNICATIONS AND INFORMATION

Pub. L. 95-567, title I, § 106(c), Nov. 2, 1978, 92 Stat. 2409, provided that: "The position of Deputy Assistant Secretary of Commerce for Communications and Information, established in Department of Commerce Organization Order Numbered 10-10 (effective March 26, 1978), shall be compensated at the rate of pay in effect from time to time for level V of the Executive Schedule under section 5316 of title 5, United States Code."

SUBVERSIVE ACTIVITIES CONTROL BOARD

The Subversive Activities Control Board, the Chairman and Members of which were compensated under this section according to pars. (34) and (92), respectively, ceased operation on June 3, 1973, as unfunded by Congress.

ABOLITION OF UNITED STATES INFORMATION AGENCY

The United States Information Agency, including the offices of Director, Deputy Director, Deputy Director (Policy and Plans), referred to in par. (67) of this section, Associate Director (Policy and Plans), referred to in par. (103) of this section, and additional offices created by Reorg. Plan No. 8 of 1953, § 1(d), eff. Aug. 1, 1953, 18 F.R. 4542, 67 Stat. 642, set out in the Appendix to this title, was abolished by Reorg. Plan No. 2 of 1977, § 9(a)(1), 42 F.R. 62461, 91 Stat. 1639, set out in the Appendix to this title, effective on or before July 1, 1978, at such times as specified by the President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5311, 5317 of this title; title 2 sections 60a-2, 74a-3, 84a-1, 166, 282b, 288, 353, 437c; title 3 section 113; title 12 section 1723a; title 15 sections 2204; title 20 sections 964, 1221e; title 22 sections 286a, 866, 2384, 2872; title 23 section 303; title 26 section 6103; title 28 sections 332, 548, 603, 625; title 29 section 761a; title 31 section 1154; title 38 section 4107; title 39 section 206; title 42 sections 907a, 1864a, 2996d, 3525, 5041, 5871, 5872, 7138, 7211, 7232, 7291, 7293; title 43 section 1616; title 44 sections 303, 3319; title 50 App. section 2168.

§ 5317. Presidential authority to place positions at levels IV and V

EXECUTIVE ORDER No. 11189

Ex. Ord. No. 11189, Nov. 23, 1964, 29 F.R. 15855, formerly set out as a note under this section, which placed certain positions in levels IV and V of the Executive Schedule, was revoked by Ex. Ord. No. 12060, May 15, 1978, 43 F.R. 21315.

EXECUTIVE ORDER No. 11195

Ex. Ord. No. 11195, Jan. 30, 1965, 30 F.R. 1169, formerly set out as a note under this section, which placed certain positions in levels IV and V of the Executive Schedule, was revoked by Ex. Ord. No. 12060, May 15, 1978, 43 F.R. 21315.

EXECUTIVE ORDER No. 11861

Ex. Ord. 11861, May 21, 1975, 40 F.R. 22531, as amended by Ex. Ord. No. 11864, June 13, 1975, 40 F.R. 25579; Ex. Ord. No. 11872, July 21, 1975, 40 F.R. 30619; Ex. Ord. No. 11877, Sept. 2, 1975, 40 F.R. 40797; Ex. Ord. No. 11885, Oct. 15, 1975, 40 F.R. 48491; Ex. Ord. No. 11893, Dec. 31, 1975, 41 F.R. 1040; Ex. Ord. No. 11898, Jan. 14, 1976, 41 F.R. 2365; Ex. Ord. No. 11908, Mar. 18, 1976, 41 F.R. 11805; Ex. Ord. No. 11927, July 22, 1976, 41 F.R. 30583; Ex. Ord. No. 11976, Mar. 11, 1977, 42 F.R. 14081; Ex. Ord. No. 11983, May 4, 1977, 42 F.R. 23127; Ex. Ord. No. 11986, May 20, 1977, 42 F.R. 26407; Ex. Ord. No. 11995, June 8, 1977, 42 F.R. 29841; Ex. Ord. No. 11999, June 27, 1977, 42 F.R. 33255; Ex. Ord. No. 12025, Dec. 1, 1977, 42 F.R. 61447; Ex. Ord. No. 12035, Jan. 20, 1978, 43 F.R. 3073; Ex. Ord. No. 12060, May 15, 1978, F.R. 21315; Ex. Ord. No. 12069, June 30, 1978, 43 F.R. 28973, formerly set out as a note under this section, which related to the placement of certain positions in levels IV and V, was revoked by Ex. Ord. No. 12076, Aug. 18, 1978, 43 F.R. 37161, set out as a note below.

EXECUTIVE ORDER No. 11995

Ex. Ord. No. 11995, June 8, 1977, 42 F.R. 29841, formerly set out as a note under this section, which placed the position of Executive Director, Federal Personnel Management Systems Study, United States Civil Service Commission, in level V of the Executive Schedule, was revoked by Ex. Ord. No. 12060, May 15, 1978, 43 F.R. 21315.

EX. ORD. NO. 12076. PLACEMENT OF POSITIONS IN LEVELS IV AND V

Ex. Ord. No. 12076, Aug. 18, 1978, 43 F.R. 37161, as amended by Ex. Ord. No. 12099, Nov. 17, 1978, 43 F.R. 54191; Ex. Ord. No. 12111, Jan. 2, 1979, 44 F.R. 1071, provided:

By the authority vested in me as President by Section 5317 of Title 5 of the United States Code, in order to place in level IV of the Executive Schedule the positions of Senior Adviser to the Secretary of State and Special Assistant to the Special Representative for Trade Negotiations, and in order to codify other positions presently placed in levels IV and V of the Executive Schedule, it is hereby ordered as follows:

1-1. EXECUTIVE SCHEDULE POSITIONS.

1-101. The following positions are placed in level IV of the Executive Schedule:

(a) Senior Adviser to the Secretary, Department of State.

(b) Director, United States Secret Service, Department of the Treasury.

(c) Assistant Secretary (Enforcement and Operations), Department of the Treasury.

(d) Adviser to the Secretary and Deputy Secretary of Defense for NATO Affairs, Department of Defense.

(e) Assistant to the Secretary for Legislative Affairs, Department of Defense.

(f) Assistant Attorney General, United States Attorneys and Trial Advocacy, Department of Justice.

(g) Director of Agricultural Economics, Department of Agriculture.

(h) Director, Office of Congressional and Public Affairs, Department of Agriculture.

(i) Chief Economist, Department to Commerce.

(j) Deputy Under Secretary for Regional Affairs, Department of Commerce.

(k) Deputy Under Secretary for International Labor Affairs, Department of Labor.

(*l*) Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare.

(m) Administrator, Alcohol, Drug Abuse and Mental Health Administration, Department of Health, Education, and Welfare.

(n) Administrator, Health Services Administration, Department of Health, Education, and Welfare.

(o) Administrator, Research and Special Programs Administration, Department of Transportation.

(p) Associate Directors (4), Office of Management and Budget, Executive Office of the President.

(q) Special Assistant to the Special Representative for Trade Negotiations, Office of the Special Representative for Trade Negotiations.

(r) Director of Policy Review, Department of Defense.

(s) Counselor on Labor Management Relations, Department of Commerce.

1-102. The following positions are placed in level V of the Executive Schedule:

(a) Deputy Director, United States Secret Service, Department of the Treasury.

(b) Director, Office of Revenue Sharing, Department of the Treasury.

(c) Principal Deputy Assistant Secretary for Communications, Command, Control and Intelligence, Department of Defense.

(d) Deputy Assistant Secretary of Defense for Reserve Affairs, Department of Defense.

[(e) Deleted.]

(f) Principal Deputy Assistant Secretary (International Security Affairs), Department of Defense.

[(g) Deleted.]

(h) Executive Director, Pension Benefit Guaranty Corporation, Department of Labor.

(i) Administrator for Pension and Welfare Benefits, Department of Labor.

(j) Executive Assistant and Counselor to the Secretary, Department of Labor.

(k) Assistant Secretary, Comptroller, Department of Health, Education, and Welfare.

(*l*) Deputy Commissioner of Social Security, Department of Health, Education, and Welfare.

(m) Commissioner on Aging, Department of Health, Education, and Welfare.

(n) Commissioner, Automated Data and Telecommunications Service, General Services Administration.

1-2. GENERAL PROVISIONS.

1-201. Nothing in this Order shall be deemed to terminate or otherwise affect the appointment, or to require the reappointment, of any occupant of any position listed in Section 1-1 of this Order who was the occupant of that position immediately prior to the issuance of this Order.

1-202. Executive Order No. 11861, as amended, is hereby revoked.

JIMMY CARTER.

§ 5318. Adjustments in rates of pay

MAXIMUM RATE OF SALARY OR BASIC PAY IN LEGISLATIVE, EXECUTIVE, AND JUDICIAL BRANCHES FOR FISCAL YEAR ENDING SEPTEMBER 30, 1979, FOR POSITIONS EQUAL OR ABOVE LEVEL V OF EXECUTIVE SCHEDULE

Pub. L. 95-429, title VI, § 613, Oct. 10, 1978, 92 Stat. 1017, provided that:

"(a) No part of the funds appropriated for the fiscal year ending September 30, 1979, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1978, if the rate of salary or basic pay for such office or position is—

"(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or

"(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title 5. United States Code or any other provision of law or congressional resolution.

"(b) For purposes of subsection (a), the rate or maximum rate (as the case may be) of salary or basic pay payable for September 30, 1978, for any office or position which was not in existence on such date shall be deemed to be the rate or maximum rate (as the case may be) of salary or basic pay payable to individuals in comparable offices or positions for such date, as determined under regulations prescribed—

"(1) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

"(2) jointly by the Speaker of the House and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

"(3) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.

"(c) For purposes of administering any provision of law, rule, or regulation which provides retirement, life insurance, or other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay."

Identical provisions were enacted by Pub. L. 95-391, title III, § 304, Sept. 30, 1978, 92 Stat. 788.

FISCAL YEAR 1977 LIMITATION ON PAY ADJUSTMENTS FOR CERTAIN POSITIONS

Pub. L. 94-440, title II, § 100, Oct. 1, 1976, 90 Stat. 1446, provided that: "No part of the funds appropriated in this Act or any other Act shall be used to pay the salary of an individual in a position or office referred to in section 225(f) of the Federal Salary Act of 1967, as amended (2 U.S.C. 356), including a Delegate to the House of Representatives, at a rate which exceeds the salary rate in effect on September 30, 1976, for such position or office except increases submitted by the President pursuant to section 225 of the Federal Salary Act of 1967."

1977 COMPARABILITY ADJUSTMENT NOT EFFECTIVE FOR CERTAIN POSITIONS

Pub. L. 95-66, July 11, 1977, 91 Stat. 270, provided that: "The first adjustment which, but for this Act, would be made after the date of enactment of this Act under the following provisions of law in the salary or rate of pay of positions or individuals to which such provisions apply, shall not take effect:

"(1) the second sentence of section 104 of title 3, United States Code, relating to comparability adjustments in the salary of the Vice President of the United States;

"(2) paragraph (2) of section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31), relating to comparability adjustments in the annual rate of pay of Members of Congress;

"(3) section 461 of title 28, United States Code, relating to comparability adjustments in the salary and rate of pay of justices, judges, commissioners, and referees; and

"(4) section 5318 of title 5, United States Code, relating to comparability adjustments in the annual rate of pay for positions in the Executive Schedule."

SUBCHAPTER III—GENERAL SCHEDULE PAY RATES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3102, 3109, 3374, 5301, 5304, 5306, 5372, 5402, 5541, 5544, 5545, 7204 of this title; title 2 sections 60e-2, 60e-2a, 60e-2b, 60e-6, 162a, 166, 197, 293, 353, 356; title 4 section 142; title 7 sections 511m, 610, 1507, 1642, 1765a, 1981; title 8 section 1103; title 10 sections 4540, 7212, 9540; title 12 sections 1701c, 2405, 3012; title 13 section 23; title 15 sections 78d, 78s, 79z-5, 80a-45, 80b-18, 205i, 278e, 327, 634d, 714g, 714h, 715h, 717q, 1023, 1942, 2451; title 16 sections 18c, 410cc-36, 450jj-1, 470m, 590d, 793, 825i, 832i, 833h, 916l; title 18 section 4001; title 20 sections 74, 75f, 76dd, 80g, 80o, 241, 1089, 1102, 1145, 1221d, 1221e, 1417, 2106; title 22 sections 272a, 277d-3, 277d-19, 280b, 280i, 280k, 287e, 287r, 289b, 290b, 886, 928, 1044, 2024, 2083, 2454, 2581, 2873, 3008; title 25 sections 2a, 305a, 633, 640d-11, 2011; title 26 sections 7471, 9010, 9040; title 28 sections 602, 625, 626; title 29 sections 172, 661, 676, 761a, 783, 954; title 30 sections 556, 664, 823; title 33 sections 569a, 984, 1325, 1374; title 35 sections 3, 7; title 38 sections 2003, 4107; title 40 sections 13b, 166b-1f, 166b-3, 174j-8, 609, 873; title 41 sections 38, 46, 104; title 42 sections 204, 217a, 300v-2, 907a, 1320a-4, 1563, 1731, 1855f, 1873, 1962a-4, 2000e-4, 2000g, 2201, 2473, 2492, 3525, 4276, 4365, 4372, 5149; title 43 sections 316n, 1616, 1731; title 45 sections 154, 362; title 46 sections 1111, 1126; title 47 section 154; title 49 sections 231, 1322, 1343, 1441, 10363, 10383; title 50 sections 402, 404; title 50 App. sections 460, 2001, 2153, 2162, 2168, 2169, 2253.

§ 5331. Definitions; application

[See main edition for text of (a)]

(b) This subchapter applies to employees and positions, other than Senior Executive Service positions, to which chapter 51 of this title applies.

(As amended Pub. L. 95-454, title IV, § 408(b)(2), Oct. 13, 1978, 92 Stat. 1173.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-454 inserted reference to Senior Executive Service positions.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

§ 5332. The General Schedule

(a) The General Schedule, the symbol for which is "GS", is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this subchapter applies, except an employee covered by the merit pay system established under section 5402 of this title, is entitled to basic pay in accordance with the General Schedule.

[See main edition for text of (b)]

(As amended Pub. L. 95-454, title V, § 503(e), Oct. 13, 1978, 92 Stat. 1184.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 inserted in second sentence reference to an employee covered by the merit pay system established under section 5402 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective on the first day of the first applicable pay period which begins on or after Oct. 1, 1981, except it may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management, see section 504(a) of Pub. L. 95-454 set out as an Effective Date note under section 5401 of this title.

EXECUTIVE ORDER No. 11941

Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43899, as amended by Ex. Ord. No. 11943, Oct. 25, 1976, 41 F.R. 47213, set out as a note under this section in the 1976 edition of this Code, which provided for the adjustment of pay rates effective Oct. 1, 1976, was superseded by Ex. Ord. No. 12010, Sept. 28, 1977, 42 F.R. 52365, formerly set out as a note under this section.

EXECUTIVE ORDER No. 12010

Ex. Ord. No. 12010, Sept. 28, 1977, 42 F.R. 52365, formerly set out as a note under this section, which provided for the adjustment of pay rates effective Oct. 1, 1977, was superseded by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, set out as a note below.

EX. ORD. NO. 12087. ADJUSTMENT OF PAY RATES EFFECTIVE OCTOBER 1, 1978

Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

1-1. ADJUSTED RATES OF PAY AND ALLOWANCES

1-101. *Statutory Pay Systems.* Pursuant to the provisions of subchapter I of Chapter 53 of Title 5 of the United States Code, the rates of basic pay and salaries are adjusted, as set forth at the schedules attached hereto and made a part hereof, for the following statutory pay systems:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) the schedules for the Foreign Service (22 U.S.C. 867 and 870(a)) at Schedule 2; and

(c) the schedules for the Department of Medicine and Surgery, Veterans Administration (38 U.S.C. 4107) at Schedule 3.

1-102. *Pay and Allowances for Members of the Uniformed Services.* Pursuant to the provisions of Section 1009 of Title 37 of the United States Code, the rates of monthly basic pay (37 U.S.C. 203(a) and (c)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) are adjusted, as set forth at Schedule 4 attached hereto and made a part hereof, for members of the uniformed services.

1-103. *Executive Salaries.* The Executive Salary Cost of Living Adjustment Act (Public Law 94-82, 89 Stat. 419) [see Short Title note under section 5312 of this title] provides for adjustments in the rates of pay and salaries as set forth at the schedules attached hereto and made a part hereof, for the following:

(a) The Vice President (3 U.S.C. 104) and the Executive Schedule (5 U.S.C. 5312-5316) at Schedule 5;

(b) Congressional Salaries (2 U.S.C. 31) at Schedule 6; and

(c) Judicial Salaries (28 U.S.C. 5, 44(d), 135, 173, 213, 252, 792(b) and 11 U.S.C. 68(a)), at Schedule 7.

1-2. GENERAL PROVISIONS

1-201. *Effective Date.* The adjustments in rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services shall be effective on October 1, 1978. All other adjustments of salary or pay shall be effective on the first day of the first applicable pay period beginning on or after October 1, 1978.

1-202. *Superseded Orders.* Executive Order No. 12010 of September 28, 1977 is superseded.

JIMMY CARTER.

SCHEDULE 1

The General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-1	$6,561	$6,780	$6,999	$7,218	$7,437	$7,656	$7,875	$8,094	$8,313	$8,532
GS-2	7,422	7,669	7,916	8,163	8,410	8,657	8,904	9,151	9,398	9,645
GS-3	8,366	8,645	8,924	9,203	9,482	9,761	10,040	10,319	10,598	10,877
GS-4	9,391	9,704	10,017	10,330	10,643	10,956	11,269	11,582	11,895	12,208
GS-5	10,507	10,857	11,207	11,557	11,907	12,257	12,607	12,957	13,307	13,657
GS-6	11,712	12,102	12,492	12,882	13,272	13,662	14,052	14,442	14,832	15,222
GS-7	13,014	13,448	13,882	14,316	14,750	15,184	15,618	16,052	16,486	16,920
GS-8	14,414	14,894	15,374	15,854	16,334	16,814	17,294	17,774	18,254	18,734
GS-9	15,920	16,451	16,982	17,513	18,044	18,575	19,106	19,637	20,168	20,699
GS-10	17,532	18,116	18,700	19,284	19,868	20,452	21,036	21,620	22,204	22,788
GS-11	19,263	19,905	20,547	21,189	21,831	22,473	23,115	23,757	24,399	25,041
GS-12	23,087	23,857	24,627	25,397	26,167	26,937	27,707	28,477	29,247	30,017
GS-13	27,453	28,368	29,283	30,198	31,113	32,028	32,943	33,858	34,773	35,688
GS-14	32,442	33,523	34,604	35,685	36,766	37,847	38,928	40,009	41,090	42,171
GS-15	38,160	39,432	40,704	41,976	43,248	44,520	45,792	47,064	*48,336	*49,608
GS-16	44,756	46,248	*47,740	*49,232	*50,724	*52,216	*53,708	*55,200	*56,692	
GS-17	*52,429	*54,177	*55,925	*57,673	*59,421					
GS-18	*61,449									

*Basic pay is limited by Section 5308 of Title 5 of the United States Code to the rate for level V of the Executive Schedule. In addition, pursuant to Section 304 of the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary in this schedule at a rate which exceeds the rate for level V of the Executive Schedule in effect on September 30, 1978, which is $47,500.

SCHEDULE 2

Foreign Service Schedules

PART 1—THE PER ANNUM SALARIES OF FOREIGN SERVICE OFFICERS

	1	2	3	4	5	6	7
FSO-01	*$57,853	*$59,781	*$61,449				
FSO-02	44,430	45,911	47,392	*$48,873	*$50,354	*$51,835	*$53,316
FSO-03	34,642	35,797	36,952	38,107	39,262	40,417	41,572
FSO-04	27,453	28,368	29,283	30,198	31,113	32,028	32,943
FSO-05	22,137	22,875	23,613	24,351	25,089	25,827	26,565
FSO-06	18,179	18,785	19,391	19,997	20,603	21,209	21,815
FSO-07	15,222	15,729	16,236	16,743	17,250	17,757	18,264
FSO-08	13,014	13,448	13,882	14,316	14,750	15,184	15,618

*Basic pay is limited by Section 5308 of Title 5 of the United States Code to the rate for level V of the Executive Schedule. In addition, pursuant to Section 304 of the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary in this schedule at a rate which exceeds the rate for level V of the Executive Schedule in effect on September 30, 1978, which is $47,500.

PART II—THE PER ANNUM SALARIES OF FOREIGN STAFF OFFICERS AND EMPLOYEES

	1	2	3	4	5	6	7	8	9	10
FSS-01	$34,642	$35,797	$36,952	$38,107	$39,262	$40,417	$41,572	$42,727	$43,882	$45,037
FSS-02	27,453	28,366	29,283	30,198	31,113	32,028	32,943	33,858	34,773	35,688
FSS-03	22,137	22,875	23,613	24,351	25,089	25,827	26,565	27,303	28,041	28,779
FSS-04	18,179	18,785	19,391	19,997	20,603	21,209	21,815	22,421	23,027	23,633
FSS-05	16,265	16,807	17,349	17,891	18,433	18,975	19,517	20,059	20,601	21,143
FSS-06	14,561	15,046	15,531	16,016	16,501	16,986	17,471	17,956	18,441	18,926
FSS-07	13,041	13,476	13,911	14,346	14,781	15,216	15,651	16,086	16,521	16,956
FSS-08	11,685	12,075	12,465	12,855	13,245	13,635	14,025	14,415	14,805	15,195
FSS-09	10,473	10,822	11,171	11,520	11,869	12,218	12,567	12,916	13,265	13,614
FSS-10	9,391	9,704	10,017	10,330	10,643	10,956	11,269	11,582	11,895	12,208

SCHEDULE 3

Department of Medicine and Surgery Schedules, Veterans Administration

	Minimum	Maximum
Section 4103 Schedule:		
Chief Medical Director		***$68,909
Deputy Chief Medical Director		**66,104
Associate Deputy Chief Medical Director.		*63,315
Assistant Chief Medical Director		*61,449
Medical Director	*$52,429	*59,421
Director of Nursing Service	*52,429	*59,421
Director of Podiatric Service	44,756	*56,692
Director of Chaplain Service	44,756	*56,692
Director of Pharmacy Service	44,756	*56,692
Director of Dietetic Service	44,756	*56,692
Director of Optometric Service	44,756	*56,692
Physician and Dentist Schedule:		
Director grade	$44,756	*$56,692
Executive grade	41,327	*53,729
Chief grade	38,160	*$49,608
Senior grade	32,442	42,171
Intermediate grade	27,453	35,688
Full grade	23,087	30,017
Associate grade	19,263	25,041
Nurse Schedule:		
Director grade	$38,160	*49,608
Assistant Director grade	32,442	42,171
Chief grade	27,453	35,688
Senior grade	23,087	30,017
Intermediate grade	19,263	25,041
Full grade	15,920	20,699
Associate grade	13,700	17,813
Junior grade	11,712	15,222
Clinical Podiatrist and Optometrist Schedule:		
Chief grade	$38,160	*$49,608
Senior grade	32,442	42,171
Intermediate grade	27,453	35,688
Full grade	23,087	30,017
Associate grade	19,263	25,041

*Basic pay is limited by Section 4107(d) of Title 38 of the United States Code to the rate for level V of the Executive Schedule. In addition, pursuant to Section 304 of the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary for this position or grade at a rate which exceeds the rate for level V of the Executive Schedule in effect on September 30, 1978, which is $47,500.

**Basic pay is limited by Section 4107(d) of Title 38 of the United States Code to the rate for level IV of the Executive Schedule. In addition, pursuant to Section 304 of the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary for this position at a rate which exceeds the rate for level IV of the Executive Schedule in effect on September 30, 1978, which is $50,000.

***Basic pay is limited by Section 4107(d) of Title 38 of the United States Code to the rate for level III of the Executive Schedule. In addition, pursuant to Section 304 of the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary for this position at a rate which exceeds the rate for level III of the Executive Schedule in effect on September 30, 1978, which is $52,500.

SCHEDULE 4

Pay and Allowances of the Uniformed Services

PART 1—MONTHLY BASIC PAY

(Years of service computed under 37 U.S.C. 205)

Commissioned Officers

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
0-10[1]	$3298.20	$3414.30	$3414.30	$3414.30	$3414.30
0-9	2923.20	3000.00	3063.60	3063.60	3063.60
0-8	2647.50	2727.00	2791.80	2791.80	2791.80
0-7	2199.90	2349.60	2349.60	2349.60	2454.90
0-6	1630.50	1791.90	1908.60	1908.60	1908.60
0-5	1304.40	1531.80	1637.40	1637.40	1637.40
0-4	1099.50	1338.30	1428.00	1428.00	1454.10
0-3[2]	1021.80	1142.10	1220.70	1350.90	1415.40
0-2[2]	890.70	972.90	1168.80	1208.10	1233.00
0-1[2]	773.10	804.90	972.90	972.90	972.90

Pay Grade	Over 8	Over 10	Over 12	Over 14	Over 16
0-10[1]	$3545.10	$3545.10	$3816.90	$3816.90	*$4089.90
0-9	3141.90	3141.90	3272.10	3272.10	3545.10
0-8	3000.00	3000.00	3141.90	3141.90	3272.10
0-7	2454.90	2597.40	2597.40	2727.00	3000.00
0-6	1908.60	1908.60	1908.60	1973.40	2286.00
0-5	1637.40	1687.20	1777.50	1896.30	2038.50
0-4	1518.90	1622.10	1713.60	1791.90	1869.90
0-3[2]	1466.70	1545.30	1622.10	1662.00	1662.00
0-2[2]	1233.00	1233.00	1233.00	1233.00	1233.00
0-1[2]	972.90	972.90	972.90	972.90	972.90

Pay Grade	Over 18	Over 20	Over 22	Over 26	Over 30
0-10	*$4089.90	*$4363.50	*$4363.50	*$4635.60	*$4635.60
0-9	3545.10	3816.90	3816.90	*4089.90	*4089.90
0-8	3414.30	3545.10	3687.30	3687.30	3687.30
0-7	3206.10	3206.10	3206.10	3206.10	3206.10
0-6	2403.00	2454.90	2597.40	2817.00	2817.00
0-5	2155.80	2220.60	2298.30	2298.30	2298.30
0-4	1922.10	1922.10	1922.10	1922.10	1922.10
0-3[2]	1662.00	1662.00	1662.00	1662.00	1662.00
0-2[2]	1233.00	1233.00	1233.00	1233.00	1233.00
0-1[2]	972.90	972.90	972.90	972.90	972.90

[1]While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, basic pay for this grade is $5114.70* regardless of cumulative years of service computed under Section 205 of Title 37 of the United States Code.

[2]Does not apply to commissioned officers who have been credited with over 4 years' active service as enlisted members.

*Basic pay is limited by Section 5308 of Title 5 of the United States Code to the rate for level V of the Executive Schedule. In addition, pursuant to Section 304 of the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary in this schedule at a rate which exceeds the rate for level V of the Executive Schedule in effect on September 30, 1978, which is $3958.20 per month.

Commissioned officers who have been credited with over 4 years' active service as enlisted members

(Years of service computed under 37 U.S.C. 205)

Pay Grade	Over 4	Over 6	Over 8	Over 10
0-3	$1350.90	$1415.40	$1466.70	$1545.30
0-2	1208.10	1233.00	1272.30	1338.30
0-1	972.90	1039.20	1077.60	1116.60

Pay Grade	Over 12	Over 14	Over 16	Over 18
0-3	$1622.10	$1687.20	$1687.20	$1687.20
0-2	1389.90	1428.00	1428.00	1428.00
0-1	1155.60	1208.10	1208.10	1208.10

Pay Grade	Over 20	Over 22	Over 26	Over 30
0-3	$1687.20	$1687.20	$1687.20	$1687.20
0-2	1428.00	1428.00	1428.00	1428.00
0-1	1208.10	1208.10	1208.10	1208.10

Warrant Officers

(Years of service computed under 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
W-4	$1040.70	$1116.60	$1116.60	$1142.10	$1194.30
W-3	946.20	1026.30	1026.30	1039.20	1051.50
W-2	828.60	896.10	896.10	922.20	972.90
W-1	690.30	791.70	791.70	857.40	896.10

Pay Grade	Over 8	Over 10	Over 12	Over 14	Over 16
W-4	$1246.80	$1299.00	$1389.90	$1454.10	$1505.70
W-3	1128.30	1194.30	1233.00	1272.30	1310.40
W-2	1026.30	1065.00	1104.00	1142.10	1182.00
W-1	934.80	972.90	1013.10	1051.50	1090.20

Pay Grade	Over 18	Over 20	Over 22	Over 26	Over 30
W-4	$1545.30	$1596.00	$1649.40	$1777.50	$1777.50
W-3	1350.90	1403.10	1454.10	1505.70	1505.70
W-2	1220.70	1259.40	1310.40	1310.40	1310.40
W-1	1128.30	1168.80	1168.80	1168.80	1168.80

Enlisted Members

(Years of service computed under 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
E-9	$0	$0	$0	$0	$0
E-8	0	0	0	0	0
E-7	692.70	747.60	775.50	802.20	830.10
E-6	598.20	652.20	679.50	708.00	734.40
E-5	525.30	571.50	599.40	625.50	666.30
E-4	504.90	533.10	564.30	608.40	632.40
E-3	485.40	512.10	532.80	553.80	553.80
E-2	467.40	467.40	467.40	467.40	467.40
E-1	419.40	419.40	419.40	419.40	419.40

Pay Grade	Over 8	Over 10	Over 12	Over 14	Over 16
E-9[1]	$0	$1182.30	$1209.30	$1236.90	$1265.40
E-8	992.10	1019.70	1047.00	1074.60	1102.50
E-7	856.20	883.50	911.10	952.20	979.20
E-6	761.40	789.30	830.10	856.20	883.50
E-5	693.60	721.20	747.60	761.40	761.40
E-4	632.40	632.40	632.40	632.40	632.40
E-3	553.80	553.80	553.80	553.80	553.80
E-2	467.40	467.40	467.40	467.40	467.40
E-1	419.40	419.40	419.40	419.40	419.40

Enlisted Members—Continued

(Years of service computed under 37 U.S.C. 205)—Continued

	Over 18	Over 20	Over 22	Over 26	Over 30
E-9[1]	$1293.30	$1318.50	$1388.10	$1522.80	$1522.80
E-8	1128.00	1155.90	1223.70	1360.20	1360.20
E-7	1006.80	1019.70	1088.40	1223.70	1223.70
E-6	897.00	897.00	897.00	897.00	897.00
E-5	761.40	761.40	761.40	761.40	761.40
E-4	632.40	632.40	632.40	632.40	632.40
E-3	553.80	553.80	553.80	553.80	553.80
E-2	467.40	467.40	467.40	467.40	467.40
E-1	419.40	419.40	419.40	419.40	419.40

[1] While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $1851.00 regardless of cumulative years of service computed under Section 205 of Title 37 of the United States Code.

PART II—BASIC ALLOWANCE FOR SUBSISTENCE RATES

Officers	$62.80 per month
Enlisted Members:	
When on leave or authorized to mess separately.	$3.00 per day
When rations in-kind are not available.	$3.38 per day
When assigned to duty under emergency conditions where no messing facilities of the United States are available.	$4.48 per day

PART III—MONTHLY BASIC ALLOWANCE FOR QUARTERS RATES

Pay Grade	Without Dependents		With Dependents
	Full Rate[1]	Partial Rate[2]	
Commissioned Officers:			
0-10	$357.90	$50.70	$447.60
0-9	357.90	50.70	447.60
0-8	357.90	50.70	447.60
0-7	357.90	50.70	447.60
0-6	321.30	39.60	391.80
0-5	296.10	33.00	356.70
0-4	263.70	26.70	318.30
0-3	231.90	22.20	286.20
0-2	201.30	17.70	254.70
0-1	156.90	13.20	204.60
Warrant Officers:			
W-4	$254.10	$25.20	$306.60
W-3	226.50	20.70	279.30
W-2	197.10	15.90	250.50
W-1	177.90	13.80	230.40
Enlisted Members:			
E-9	$191.70	$18.60	$269.70
E-8	176.70	15.30	249.30
E-7	150.30	12.00	231.90
E-6	136.50	9.90	213.30
E-5	131.10	8.70	195.90
E-4	115.80	8.10	172.50
E-3	103.50	7.80	150.30
E-2	91.50	7.20	150.30
E-1	86.40	6.90	150.30

[1] Payment of the full rate of basic allowance for quarters at these rates for members of the uniformed services to personnel without dependents is authorized by 37 U.S.C. 403 and Part IV of Executive Order No. 11157, as amended.

[2] Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(d) and Part IV of Executive Order No. 11157, as amended.

PART IV—MONTHLY RATE OF CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by Section 203(c) of Title 37 of the United States Code is adjusted from $332.70 to $351.00.

SCHEDULE 5

Vice President and the Executive Schedule

Vice President	$79,100*
Level I	$69,600**
Level II	$60,700***
Level III	$55,400****
Level IV	$52,800*****
Level V	$50,100******

Pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on September 30, 1978, as follows:

*$75,000
**$66,000
***$57,500
****$52,500
*****$50,000
******$47,500

SCHEDULE 6

Congressional Salaries

Senator	$60,700*
Member of the House of Representatives	$60,700*
Delegate to the House of Representatives	$60,700*
Resident Commissioner from Puerto Rico	$60,700*
President pro tempore of the Senate	$68,600**
Majority leader and minority leader of Senate	$68,600**
Majority leader and minority leader of House of Representatives	$68,600**
Speaker of the House of Representatives	$79,100***

Pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on September 30, 1978, as follows:

*$57,500
**$65,000
***$75,000

SCHEDULE 7

Judicial Salaries

Chief Justice of the United States	$79,100*
Associate Justices of the Supreme Court	$76,000**
Circuit Judges	$60,700***
District Judges	$57,500****
Judges of the Court of Claims	$60,700***
Judges of the Court of Customs and Patent Appeals	$60,700***
Judges of the Customs Court	$57,500****
Commissioners of the Court of Claims	$51,200*****
Referees in Bankruptcy (full-time)	$51,200*****

Pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on September 30, 1978, as follows:

*$75,000
**$72,000
***$57,500
****$54,500
*****$48,500

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 575, 3109, 5303, 5374, 5948, 6301 of this title; title 2 sections 60a–1, 60a–2, 166, 353, 414, 416, 437c, 476, 601; title 3 sections 105, 106, 107, 113, 114; title 7 sections 16, 1765a, 3127; title 10 sections 867, 4540, 7212, 9540; title 11 App. section 1302; title 12 sections 634, 635a, 636, 1749bbb–1, 2405, 3013; title 15 sections 205h, 205i, 1275, 2412, 2451; title 16 sections 79*l*, 470m, 825q–1, 1401, 1403; title 17 section 802; title 18 sections 207, 3153, 4202, 4204, 4351, 4352; title 19 sections 1331, 2171; title 20 sections 929, 955, 957, 963, 1102, 1135c–1, 1221e, 1221f, 1233c, 1233d, 1402, 1505, 2011, 2012, 2103, 2390, 3012; title 21 sections 113a, 376; title 22 sections 1037a, 2385, 2386, 2512, 2903, 2905; title 25 section 640d–11; title 26 section 4946; title 28 sections 332, 548, 586, 587, 594, 602, 625; title 28 App. section 308; title 29 sections 183, 656, 661, 676, 761a, 782, 783, 792, 794b; title 30 sections 812, 938, 1229, 1315; title 31 section 52c; title 32 section 709; title 33 sections 906, 1128, 1320, 1325, 1374; title 37 section 1009; title 40 section 166b–1; title 41 sections 351, 607; title 42 sections 300j–10, 1320a–1, 1320c–12, 1395oo, 1863, 1873, 1962a–4, 1962b–4, 1975d, 2968, 3015, 3525, 3765, 3774, 4365, 4372, 4845, 5042, 5105, 5112, 5612, 5619, 5651, 5841, 6614, 6616, 6632, 7211, 7213, 7231, 7233, 7546, 7623, 8103; title 44 section 3319; title 50 App. section 2169.

§ 5333. Minimum rate for new appointments; higher rates for supervisors of wage-board employees

(a) New appointments shall be made at the minimum rate of the appropriate grade. However, under regulations prescribed by the Office of Personnel Management which provide for such considerations as the existing pay or unusually high or unique qualifications of the candidate, or a special need of the Government for his services, the head of an agency may appoint, with the approval of the Office in each specific case, an individual to a position in GS–11 or above at such a rate above the minimum rate of the appropriate grade as the Office may authorize for this purpose. The approval of the Office in each specific case is not required with respect to an appointment made by the Librarian of Congress.

(b) Under regulations prescribed by the Office of Personnel Management, an employee in a position to which this subchapter applies, who regularly has responsibility for supervision (including supervision over the technical aspects of the work concerned) over employees whose pay is fixed and adjusted from time to time by wage boards or similar administrative authority as nearly as is consistent with the public interest in accordance with prevailing rates, may be paid at one of the rates for his grade which is above the highest rate of basic pay being paid to any such prevailing-rate employee regularly supervised, or at the maximum rate for his grade, as provided by the regulations.

(As amended Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

Subsec. (b). Pub. L. 95–454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 84; title 10 sections 4540, 7212, 9540.

§ 5334. Rate on change of position or type of appointment; regulations

(a) The rate of basic pay to which an employee is entitled is governed by regulations prescribed by the Office of Personnel Management in conformity with this subchapter and chapter 51 of this title when—

[See main edition for text of (1) to (7) and closing sentence]

(b) An employee who is promoted or transferred to a position in a higher grade is entitled to basic pay at the lowest rate of the higher grade which exceeds his existing rate of basic pay by not less than two step-increases of the grade from which he is promoted or transferred. If, in the case of an employee so promoted or transferred who is receiving basic pay at a rate in excess of the maximum rate of his grade, there is no rate in the higher grade which is at least two step-increases above his existing rate of basic pay, he is entitled to—

(1) the maximum rate of the higher grade; or

(2) his existing rate of basic pay, if that rate is the higher.

If an employee so promoted or transferred is receiving basic pay at a rate saved to him under subchapter VI of this chapter on reduction in grade, he is entitled to—

(A) basic pay at a rate two steps above the rate which he would be receiving if subchapter VI of this chapter were not applicable to him; or

(B) his existing rate of basic pay, if that rate is the higher.

(c) An employee in the legislative branch who is paid by the Secretary of the Senate or the Clerk of the House of Representatives, and who has completed two or more years of service as such an employee, and a Member of the Senate or House of Representatives who has completed two or more years of service as such a Member, may, on appointment to a position to which this subchapter applies, have his initial rate of pay fixed—

(1) at the minimum rate of the appropriate grade; or

(2) at a step, or for an employee appointed to a position covered by the merit pay system established under section 5402 of this title, any dollar amount, of the appropriate grade that does not exceed the highest previous rate of pay received by him during that service in the legislative branch.

(d) The rate of pay established for a teaching position as defined by section 901 of title 20 held by an individual who becomes subject to subsection (a) of this section is deemed increased by 20 percent to determine the yearly rate of pay of the position.

(e) An employee of a county committee established pursuant to section 590h(b) of title 16 may upon appointment to a position under the Department of Agriculture, subject to this subchapter, have his initial rate of basic pay fixed at the minimum rate of the appropriate grade, or at any step of such grade that does not exceed the highest previous rate of basic pay received by him during service with such county committee.

(f) In the case of an employee covered by the merit pay system established under section 5402 of this title, all references in this section to "two steps" or "two step-increases" shall be deemed to mean 6 percent.

(As amended Pub. L. 95-454, title V, § 503(f), title VIII, § 801 (a)(2), (3) (F), (G), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1184, 1221, 1222, 1224.)

REFERENCES IN TEXT

Section 3182(2) of title 42, referred to in subsec. (a) was redesignated as section 3182(a)(2) of title 42 by Pub. L. 91-123, § 204.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b). Pub. L. 95-454, § 801(a)(3)(F), substituted "subchapter VI of this chapter" for "section 5337 of this title" wherever appearing.

Subsec. (c). Pub. L. 95-454, § 503(f)(1), inserted in par. (2) reference to an employee appointed to a position covered by the merit pay system established under section 5402 of this title.

Subsec. (d). Pub. L. 95-454, § 801 (a)(2), (3)(G), redesignated former subsec. (e) as (d). Former subsec. (d), which related to regulations governing the retention of the rate of basic pay of an employee and his position covered by this subchapter and chapter 51 of this title, was struck out.

Subsecs. (e), (f). Pub. L. 95-454, § 801(a)(3)(G), redesignated former subsecs. (e) and (f) as (d) and (e), respectively.

Pub. L. 95-454, § 503(f)(2), added a new subsec. (f).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) by section 906(a)(2) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Amendment of subsecs. (b), (d), and (e), and redesignation of subsec. (f) by section 801(a)(2), (3)(F), (G), of Pub. L. 95-454 effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

Amendment of subsec. (c), and addition of subsec. (f), by Pub. L. 95-454, § 503(f), effective on the first day of the first applicable pay period which begins on or after Oct. 1, 1981, except it may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management, see section 504(a) of Pub. L. 95-454 set out as an Effective Date note under section 5401 of this title.

§ 5335. Periodic step-increases

(a) An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not reached the maximum rate of pay for the grade in which his position is placed, shall be ad-

vanced in pay successively to the next higher rate within the grade at the beginning of the next pay period following the completion of—

[*See main edition for text of (1) to (3)*]

subject to the following conditions:

(A) the employee did not receive an equivalent increase in pay from any cause during that period; and

(B) the work of the employee, except a[1] administrative law judge appointed under section 3105 of this title, is of an acceptable level of competence as determined by the head of the agency.

(b) Under regulations prescribed by the Office of Personnel Management, the benefit of successive step-increases shall be preserved for employees whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency.

(c) When a determination is made under subsection (a) of this section that the work of an employee is not of an acceptable level of competence, the employee is entitled to prompt written notice of that determination and an opportunity for reconsideration of the determination within his agency under uniform procedures prescribed by the Office of Personnel Management. If the determination is affirmed on reconsideration, the employee is entitled to appeal to the Merit Systems Protection Board. If the reconsideration or appeal results in a reversal of the earlier determination, the new determination supersedes the earlier determination and is deemed to have been made as of the date of the earlier determination. The authority of the Office to prescribe procedures and the entitlement of the employee to appeal to the Board do not apply to a determination of acceptable level of competence made by the Librarian of Congress.

[*See main edition for text of (d)*]

(e) This section does not apply to the pay of an individual covered by the merit pay system established under section 5402 of this title, or, appointed by the President, by and with the advice and consent of the Senate.

(As amended Pub. L. 95-251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, title V, § 503(g), title IX, § 906(a)(2), (8), Oct. 13, 1978, 92 Stat. 1184, 1224, 1225.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-251 substituted "administrative law judge" for "hearing examiner".

Subsec. (b). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (c). Pub. L. 95-454, § 906(a)(8), substituted references to the Office of Personnel Management and the Merit Systems Protection Board and the Office and Board, respectively, for references to the Civil Service Commission wherever appearing in the text.

Subsec. (e). Pub. L. 95-454, § 503(g), inserted reference to the merit pay system established under section 5402 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (b) and (c) by section 906(a)(2) and (8), respectively, of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Amendment of subsec. (e), by section 503(g) of Pub. L. 95-454, effective on the first day of the first applicable pay period which begins on or after Oct. 1, 1981, except it may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management, see section 504(a) of Pub. L. 95-454 set out as an Effective Date note under section 5401 of this title.

§ 5336. Additional step-increases

(a) Within the limit of available appropriations and under regulations prescribed by the Office of Personnel Management, the head of each agency may grant additional step-increases in recognition of high quality performance above that ordinarily found in the type of position concerned. However, an employee is eligible under this section for only one additional step-increase within any 52-week period.

[*See main edition for text of (b)*]

(c) This section does not apply to the pay of an individual covered by the merit pay system established under section 5402 of this title, or, appointed by the President, by and with the advice and consent of the Senate.

(As amended Pub. L. 95-454, title V, § 503(h), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1184, 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (c). Pub. L. 95-454, § 503(h), inserted reference to the merit pay system established under section 5402 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) by section 906(a)(2) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Amendment of subsec. (c), by section 503(h) of Pub. L. 95-454, effective on the first day of the first applicable pay period which begins on or after Oct. 1, 1981, except it may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management, see section 504(a) of Pub. L. 95-454 set out as an Effective Date note under section 5401 of this title.

[§ 5337. Repealed. Pub. L. 95-454, title VIII, § 801(a)(2), Oct. 13, 1978, 92 Stat. 1221]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 470; Pub. L. 92-392, § 3, Aug. 19, 1972, 86 Stat. 573, set forth provisions relating to pay saving for employees reduced in grade from a grade in the General Schedule.

[1] So in original. Should be "an".

EFFECTIVE DATE OF REPEAL

Section repealed on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, and an employee receiving pay on the day before such effective date not to have such pay reduced or terminated and, unless section 5362 applies, employee is entitled to continuation of such pay, etc., see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

§ 5338. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SUBCHAPTER IV—PREVAILING RATE SYSTEMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2105, 5361, 5541, 7201, 7204 of this title; title 31 section 665a; title 40 section 174j-8.

§ 5341. Policy

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 sections 4540, 7212, 9540; title 41 section 351.

§ 5342. Definitions; application

ABOLITION OF THE ATOMIC ENERGY COMMISSION

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5343, 5361, 5550 of this title; title 10 sections 4540, 7212, 9540.

§ 5343. Prevailing rate determinations; wage schedules; night differentials

(a) The pay of prevailing rate employees shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates. Subject to section 213(f) of title 29, the rates may not be less than the appropriate rates provided by section 206(a)(1) of title 29. To carry out this subsection—

(1) the Office of Personnel Management shall define, as appropriate—

[See main edition for text of (A) and (B)]

(2) the Office of Personnel Management shall designate a lead agency for each wage area;

(3) subject to paragraph (5) of this subsection, and subsections (c)(1)–(3) and (d) of this section, a lead agency shall conduct wage surveys, analyze wage survey data, and develop and establish appropriate wage schedules and rates for prevailing rate employees;

(4) the head of each agency having prevailing rate employees in a wage area shall apply, to the prevailing rate employees of that agency in that area, the wage schedules and rates established by the lead agency, or by the Office of Personnel Management, as appropriate, for prevailing rate employees in that area; and

(5) the Office of Personnel Management shall establish wage schedules and rates for prevailing rate employees who are United States citizens employed in any area which is outside the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) The Office of Personnel Management shall schedule full-scale wage surveys every 2 years and shall schedule interim surveys to be conducted between each 2 consecutive full-scale wage surveys. The Office may schedule more frequent surveys when conditions so suggest.

(c) The Office of Personnel Management, by regulation, shall prescribe practices and procedures for conducting wage surveys, analyzing wage survey data, developing and establishing wage schedules and rates, and administering the prevailing rate system. The regulations shall provide—

[See main edition for text of (1) to (3)]

(4) for proper differentials, as determined by the Office, for duty involving unusually severe working conditions or unusually severe hazards;

[See main edition for text of (5) and (6); (d)]

(e)(1) Each grade of a regular wage schedule for nonsupervisor prevailing rate employees shall have 5 steps with—

[See main edition for text of (A) to (E) and (2)]

(3) Under regulations prescribed by the Office of Personnel Management, the benefits of successive step increases shall be preserved for prevailing rate employees under a regular wage schedule whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency.

[See main edition for text of (4); (f)]

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission" wherever appearing.

Subsecs. (b), (c). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission" and "Office" for "Commission".

Subsec. (e)(3). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

NEGOTIATING REQUIREMENTS FOR LABOR CONTRACTS, ETC., ON AND AFTER OCTOBER 13, 1978, AND NEGOTIATED UNDER PREVAILING RATES AND PRACTICES PRIOR TO AUGUST 19, 1972

Section 704 of Pub. L. 95-454 provided that:

"(a) Those terms and conditions of employment and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 [set out as a note under this section in the main edition] applies which were the subject of negotiation in accordance with prevailing rates and practices prior to August 19, 1972, shall be negotiated on and after the date of the enactment of this Act [Oct. 13, 1978] in accordance with the provisions of section 9(b) of Public Law 92-392 without regard to any provision of chapter 71 of title 5, United States Code (as amended by this title [title VII of Pub. L. 95-454]), to the extent that any such provision is inconsistent with this paragraph.

"(b) The pay and pay practices relating to employees referred to in paragraph (1) of this subsection shall be negotiated in accordance with prevailing rates and pay practices without regard to any provision of—

(A) chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph;

(B) subchapter IV of chapter 53 and subchapter V of chapter 55 of title 5, United States Code; or

(C) any rule, regulation, decision, or order relating to rates of pay or pay practices under subchapter IV of chapter 53 or subchapter V of chapter 55 of title 5, United States Code."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5361, 5544, 6101 of this title.

[§ 5345. Repealed. Pub. L. 95-454, title VIII, § 801(a)(2), Oct. 13, 1978, 92 Stat. 1221]

Section, added Pub. L. 92-392, § 1(a), Aug. 19, 1972, 86 Stat. 569, related to retained rate of pay on reduction in grade or reassignment.

EFFECTIVE DATE OF REPEAL

Section repealed on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, and an employee receiving pay on the day before such effective date not to have such pay reduced or terminated and, unless section 5362 applies, employee is entitled to continuation of such pay, etc., see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

§ 5346. Job grading system

(a) The Office of Personnel Management, after consulting with the agencies and with employee organizations, shall establish and maintain a job grading system for positions to which this subchapter applies. In carrying out this subsection, the Office shall—

[See main edition for text of (1) to (5)]

(b) The Office, from time to time, shall review such numbers of positions in each agency as will enable the Office to determine whether the agency is placing positions in occupations and grades in conformance with or consistently with published job standards. When the Office finds that a position is not placed in its proper occupation and grade in conformance with published standards or that a position for which there is no published standard is not placed in the occupation and grade consistently with published standards, it shall, after consultation with appropriate officials of the agency concerned, place the position in its appropriate occupation and grade and shall certify this action to the agency. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(c) On application, made in accordance with regulations prescribed by the Office, by a prevailing rate employee for the review of the action of an employing agency in placing his position in an occupation and grade for pay purposes, the Office shall—

[See main edition for text of (1) to (3)]

The Office shall certify to the agency concerned its action under paragraph (3) of this subsection. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsecs. (b), (c). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5366 of this title.

§ 5347. Federal Prevailing Rate Advisory Committee

(a) There is established a Federal Prevailing Rate Advisory Committee composed of—

(1) the Chairman, who shall not hold any other office or position in the Government of the United States or the government of the District of Columbia, and who shall be appointed by the Director of the Office of Personnel Management for a 4-year term;

(2) one member from the Office of the Secretary of Defense, designated by the Secretary of Defense;

(3) two members from the military departments, designated by the Director of the Office of Personnel Management;

(4) one member, designated by the Director of the Office of Personnel Management from

time to time from an agency (other than the Department of Defense, a military department, and the Office of Personnel Management);

(5) an employee of the Office of Personnel Management, designated by the Director of the Office of Personnel Management; and

(6) five members, designated by the Director of the Office of Personnel Management, from among the employee organizations representing, under exclusive recognition of the Government of the United States, the largest numbers of prevailing rate employees.

(b) In designating members from among employee organizations under subsection (a)(6) of this section, the Director of the Office of Personnel Management shall designate, as nearly as practicable, a number of members from a particular employee organization in the same proportion to the total number of employee representatives appointed to the Committee under subsection (a)(6) of this section as the number of prevailing rate employees represented by such organization is to the total number of prevailing rate employees. However, there shall not be more than two members from any one employee organization nor more than four members from a single council, federation, alliance, association, or affiliation of employee organizations.

(c) Every 2 years the Director of the Office of Personnel Management shall review employee organization representation to determine adequate or proportional representation under the guidelines of subsection (b) of this section.

(d) The members from the employee organizations serve at the pleasure of the Director of the Office of Personnel Management.

(e) The Committee shall study the prevailing rate system and other matters pertinent to the establishment of prevailing rates under this subchapter and, from time to time, advise the Office of Personnel Management thereon. Conclusions and recommendations of the Committee shall be formulated by majority vote. The Chairman of the Committee may vote only to break a tie vote of the Committee. The Committee shall make an annual report to the Commission and the President for transmittal to Congress, including recommendations and other matters considered appropriate. Any member of the Committee may include in the annual report recommendations and other matters he considers appropriate.

[See main edition for text of (f) and (g)]

(h) The Office of Personnel Management shall provide such clerical and professional personnel as the Chairman of the Committee considers appropriate and necessary to carry out its functions under this subchapter. Such personnel shall be responsible to the Chairman of the Committee.

(As amended Pub. L. 95-454, title IX, § 906(a)(1), (2), Oct. 13, 1978, 92 Stat. 1224.)

REFERENCES IN TEXT

The term "Commission", meaning the Civil Service Commission, referred to in subsec. (e), was not amended by section 906(a)(3) of Pub. L. 95-454 by substitution of the term "Office", meaning the Office of Personnel Management, to reflect the general transfer of functions of the Civil Service Commission to the Office of Personnel Management, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(1), (2), substituted "Director of the Office of Personnel Management" for "Chairman of the Civil Service Commission" and "Office of Personnel Management" for "Civil Service Commission" wherever appearing.

Subsecs. (b) to (d). Pub. L. 95-454, § 906(a)(1), substituted "Director of the Office of Personnel Management" for "Chairman of the Civil Service Commission".

Subsec. (e). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (h). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5349. Prevailing rate employees; legislative, judicial, Bureau of Engraving and Printing, and government of the District of Columbia

(a) The pay of employees, described under section 5102(c)(7) of this title, in the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Office of the Architect of the Capitol, the Bureau of Engraving and Printing, and the government of the District of Columbia, shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and in accordance with such provisions of this subchapter, including the provisions of section 5344, relating to retroactive pay, and subchapter VI of this chapter, relating to grade and pay retention, as the pay-fixing authority of each such agency may determine. Subject to section 213(f) of title 29, the rates may not be less than the appropriate rates provided for by section 206(a)(1) of title 29. If the pay-fixing authority concerned determines that the provisions of subchapter VI of this chapter should apply to any employee under his jurisdiction, then the employee concerned shall be deemed to have satisfied the requirements of section 5361(1) of this title if the tenure of his appointment is substantially equivalent to the tenure of any appointment referred to in such paragraph.

(b) Subsection (a) of this section does not modify or otherwise affect section 5102(d) of this title, section 305 of title 44, and section 180 of title 31.

(As amended Pub. L. 95-454, title VIII, § 801(a)(3)(H), Oct. 13, 1978, 92 Stat. 1222.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 substituted "subchapter VI of this chapter, relating to grade and pay retention," for "section 5345, relating to retention of pay,", "subchapter VI of this chapter" for "section

5345 of this title", and "section 5361(1)" for "paragraph (2) of section 5345(a)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

SUBCHAPTER V—STUDENT-EMPLOYEES

§ 5351. Definitions

For the purpose of this subchapter—

[*See main edition for text of (1)*]

(2) "student-employee" means—

[*See main edition for text of (A)*]

(B) any other student-employee, assigned or attached primarily for training purposes to a hospital, clinic, or medical or dental laboratory operated by an agency, who is designated by the head of the agency with the approval of the Office of Personnel Management.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—PAR. (2)(B). PUB. L. 95-454 SUBSTITUTED "OFFICE OF PERSONNEL MANAGEMENT" FOR "CIVIL SERVICE COMMISSION"

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5352. Stipends

The head of each agency, and the District of Columbia Council with respect to the government of the District of Columbia, shall fix the stipends of its student-employees. The stipend may not exceed the applicable maximum prescribed by the Office of Personnel Management.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SUBCHAPTER VI—GRADE AND PAY RETENTION

PRIOR PROVISIONS

A prior subchapter VI was renumbered VII by Pub. L. 95-454, title VIII, § 801(a)(3)(A)(i), Oct. 13, 1978, 92 Stat. 1221.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5107, 5334, 5349, 8704 of this title; title 10 sections 4540, 7212, 9540.

§ 5361. Definitions

For the purpose of this subchapter—

(1) "employee" means an employee to whom chapter 51 of this title applies, and a prevailing rate employee, as defined by section 5342(a)(2) of this title, whose employment is other than on a temporary or term basis;

(2) "agency" has the meaning given it by section 5102 of this title;

(3) "retained grade" means the grade used for determining benefits to which an employee to whom section 5362 of this title applies is entitled;

(4) "rate of basic pay" means, in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343 of this title;

(5) "covered pay schedule" means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or the merit pay system under chapter 54 of this title;

(6) "position subject to this subchapter" means any position under a covered pay schedule; and

(7) "reduction-in-force procedures" means procedures applied in carrying out any reduction in force due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor.

(Added Pub. L. 95-454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1218.)

PRIOR PROVISIONS

A prior section 5361, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473, which related to scientific and professional positions, was renumbered section 5371 of this title by Pub. L. 95-454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

EFFECTIVE DATE

Section 801(a)(4) of Pub. L. 95-454 provided that:

"(A) The amendments made by this subsection [adding sections 5361 to 5366 of this title and redesignating former sections 5361 to 5366 as sections 5371 to 5375 of this title, amending sections 559, 1305, 3104, 5102, 5107, 5334, 5349, and 8704 of this title, sections 4540, 7212, and 9540 of Title 10, Armed Forces, section 1715 of Title 15, Commerce and Trade, and section 3608 of Title 42, The Public Health and Welfare, and repealing sections 5337 and 5345 of this title] shall take effect on the first day of the first applicable pay period beginning on or after the 90th day after the date of the enactment of this Act [Oct. 13, 1978].

"(B) An employee who was receiving pay under the provisions of section 5334(d), 5337, or 5345 of title 5, United States Code, on the day before the effective date prescribed in subparagraph (A) of this paragraph shall not have such pay reduced or terminated by reason of the amendments made by this subsection and, unless section 5362 of such title 5 (as amended by subsection (a)(1) of this section) applies, such an employee is entitled to continue to receive pay as authorized by those provisions (as in effect on such date)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5349, 5948 of this title.

§ 5362. Grade retention following a change of positions or reclassification

(a) Any employee—

(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position,

is entitled, to the extent provided in subsection (c) of this section, to have the grade of the position held immediately before such placement be considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement.

(b)(1) Any employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled, to the extent provided in subsection (c) of this section, to have the grade of such position before reduction be treated as the retained grade of such employee for the 2-year period beginning on the date of the reduction in grade.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any reduction in the grade of a position which had not been classified at the higher grade for a continuous period of at least one year immediately before such reduction.

(c) For the 2-year period referred to in subsections (a) and (b) of this section, the retained grade of an employee under such subsection (a) or (b) shall be treated as the grade of the employee's position for all purposes (including pay and pay administration under this chapter and chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87 of this title, and eligibility for training and promotion under this title) except—

(1) for purposes of subsection (a) of this section,

(2) for purposes of applying any reduction-in-force procedures,

(3) for purposes of determining whether the employee is covered by the merit pay system established under section 5402 of this title, or

(4) for such other purposes as the Office of Personnel Management may provide by regulation.

(d) The foregoing provisions of this section shall cease to apply to an employee who—

(1) has a break in service of one workday or more;

(2) is demoted (determined without regard to this section) for personal cause or at the employee's request;

(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

(4) elects in writing to have the benefits of this section terminate.

(Added Pub. L. 95–454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1219.)

PRIOR PROVISIONS

A prior section 5362, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, Pub. L. 95–251, § 2(a)(1), (b)(1), Mar. 27, 1978, 92 Stat. 183, which related to hearing examiners, was renumbered section 5372 of this title by Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

ADDITIONAL PAY AND BENEFITS FOR EMPLOYEES REDUCED IN GRADE ON OR AFTER JANUARY 1, 1977, ETC.

Section 801(b) of Pub. L. 95–454 provided that:

"(b)(1) Under regulations prescribed by the Office of Personnel Management, any employee—

"(A) whose grade was reduced on or after January 1, 1977, and before the effective date of the amendments made by subsection (a) of this section [see Effective Date note set out under section 5361 of this title] under circumstances which would have entitled the employee to coverage under the provisions of section 5362 of title 5, United States Code (as amended by subsection (a) of this section) if such amendments had been in effect at the time of the reduction; and

"(B) who has remained employed by the Federal Government from the date of the reduction in grade to the effective date of the amendments made by subsection (a) of this section without a break in service of one workday or more;

shall be entitled—

"(i) to receive the additional pay and benefits which such employee would have been entitled to receive if the amendments made by subsection (a) of this section had been in effect during the period beginning on the effective date of such reduction in grade and ending on the day before the effective date of such amendments, and

"(ii) to have the amendments made by subsection (a), of this section apply to such employee as if the reduction in grade had occurred on the effective date of such amendments.

"(2) No employee covered by this subsection whose reduction in grade resulted in an increase in pay shall have such pay reduced by reason of the amendments made by subsection (a) of this section.

"(3)(A) For purposes of this subsection, the requirements under paragraph (1)(B) of this subsection, relating to continuous employment following reduction in grade, shall be considered to be met in the case of any employee—

"(i) who separated from service with a right to an immediate annuity under chapter 83 of title 5, United States Code, or under another retirement system for Federal employees; or

"(ii) who died.

"(B) Amounts payable by reason of subparagraph (A) of this paragraph in the case of the death of an employee shall be paid in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts in the case of deceased employees.

"(4) The Office of Personnel Management shall have the same authority to prescribe regulations under this subsection as it has under section 5365 of title 5, United States Code, with respect to subchapter VI of chapter 53 of such title, as added by subsection (a) of this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5361, 5363, 5364 of this title.

§ 5363. Pay retention

(a) Any employee—

(1) who ceases to be entitled to the benefits of section 5362 of this title by reason of the expiration of the 2-year period of coverage provided under such section;

(2) who is in a position subject to this subchapter and who is subject to a reduction or termination of a special rate of pay established under section 5303 of this title; or

(3) who is in a position subject to this subchapter and who (but for this section) would

be subject to a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation to warrant the application of this section;

is entitled to basic pay at a rate equal to (A) the employee's allowable former rate of basic pay, plus (B) 50 percent of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.

(b) For the purpose of subsection (a) of this section, "allowable former rate of basic pay" means the lower of—

(1) the rate of basic pay payable to the employee immediately before the reduction in pay; or

(2) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay.

(c) The preceding provisions of this section shall cease to apply to an employee who—

(1) has a break in service of one workday or more;

(2) is entitled by operation of this subchapter or chapter 51, 53, or 54 of this title to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

(3) is demoted for personal cause or at the employee's request.

(Added Pub. L. 95–454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1219.)

PRIOR PROVISIONS

A prior section 5363, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, which related to limitation on pay fixed by administrative action, was renumbered section 5373 of this title by Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5364 of this title.

§ 5364. Remedial actions

Under regulations prescribed by the Office of Personnel Management, the Office may require any agency—

(1) to report to the Office information with respect to vacancies (including impending vacancies);

(2) to take such steps as may be appropriate to assure employees receiving benefits under section 5362 or 5363 of this title have the opportunity to obtain necessary qualifications for the selection to positions which would minimize the need for the application of such sections;

(3) to establish a program under which employees receiving benefits under section 5362 or 5363 of this title are given priority in the consideration for or placement in positions which are equal to their retained grade or pay; and

(4) to place certain employees, notwithstanding the fact their previous position was in a different agency, but only in circumstances in which the Office determines the exercise of such authority is necessary to carry out the purpose of this section.

(Added Pub. L. 95–454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1220.)

PRIOR PROVISIONS

A prior section 5364, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, which related to miscellaneous positions in the executive branch, was renumbered section 5374 of this title by Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

§ 5365. Regulations

(a) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(b) Under such regulations, the Office may provide for the application of all or portions of the provisions of this subchapter—

(1) to any individual reduced to a grade of a covered pay schedule from a position not subject to this subchapter;

(2) to individuals to whom such provisions do not otherwise apply; and

(3) to situations the application to which is justified for purposes of carrying out the mission of the agency or agencies involved.

(Added Pub. L. 95–454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1220.)

PRIOR PROVISIONS

A prior section 5365, added Pub. L. 91–34, § 1(a), June 30, 1969, 83 Stat. 41, and amended Pub. L. 94–183, § 2(20), Dec. 31, 1975, 89 Stat. 1058, which related to the police force of National Zoological Park, was renumbered section 5375 of this title by Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

§ 5366. Appeals

(a)(1) In the case of the termination of any benefits available to an employee under this subchapter on the grounds such employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay, such termination may be appealed to the Office of Personnel Management under procedures prescribed by the Office.

(2) Nothing in this subchapter shall be construed to affect the right of any employee to appeal—

(A) under section 5112(b) or 5346(c) of this title, or otherwise, any reclassification of a position; or

(B) under procedures prescribed by the Office of Personnel Management, any reduction-in-force action.

(b) For purposes of any appeal procedures (other than those described in subsection (a) of this section) or any grievance procedure negotiated under the provisions of chapter 71 of this title—

(1) any action which is the basis of an individual's entitlement to benefits under this subchapter, and

(2) any termination of any such benefits under this subchapter,

shall not be treated as appealable under such appeals procedures or grievable under such grievance procedure.

(Added Pub. L. 95-454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1221.)

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

AMENDMENTS

1978—Pub. L. 95-454, title VIII, § 801(a)(3)(A)(i), Oct. 13, 1978, 92 Stat. 1221, redesignated former subchapter VI as VII.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 42 section 1320a-4; title 50 App. section 2168.

§ 5371. Scientific and professional positions

Subject to the approval of the Office of Personnel Management, the head of the agency concerned shall fix the annual rate of basic pay for scientific and professional positions established under section 3104 of this title at not less than the minimum rate for GS-16 nor more than the maximum rate for GS-18.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473, § 5361, renumbered and amended Pub. L. 95-454, title VIII, § 801(a)(3)(A)(ii), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1221, 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1162(b).	Oct. 4, 1961, Pub. L. 87-367, § 202 "Sec. 2(b)", 75 Stat. 790. Oct. 11, 1962, Pub. L. 87-793, § 1001(a)(1), 76 Stat. 863.

The authority to fix rates of pay is added on authority of former section 1161, which is carried into section 3104.

For repeal of the Act of Aug. 1, 1947, ch. 433, 61 Stat. 715, as amended, see revision note for section 3104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

GS-16 and GS-18, referred to in text, are set out under section 5332 of this title.

AMENDMENTS

1978—Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 906(a)(2) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

CROSS REFERENCES

Annual reports by agency heads covering positions for scientific and professional personnel, see section 3104 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3104, 5948 of this title; title 49 section 1343.

§ 5372. Administrative law judges

Administrative law judges appointed under section 3105 of this title are entitled to pay prescribed by the Office of Personnel Management independently of agency recommendations or ratings and in accordance with subchapter III of this chapter and chapter 51 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473, § 5362, amended Pub. L. 95-251, § 2(a)(1), (b)(1), Mar. 27, 1978, 92 Stat. 183, and renumbered and amended Pub. L. 95-454, title VIII, § 801(a)(3)(A)(ii), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1221, 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1010 (3d sentence).	June 11, 1946, ch. 324, § 11 (3d sentence), 60 Stat. 244.

The exception from the operation of the efficiency rating system is omitted as covered by sections 4301(2)(E) and 5335(a)(B). The reference to "subchapter III of this chapter and chapter 51 of this title" is substituted for "the Classification Act of 1923, as amended" on authority of section 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 972.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Pub. L. 95-251 substituted "Administrative law judges" for "Hearing examiners" in the section catchline and the text.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 906(a)(2) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

CROSS REFERENCES

Additional requirements imposed by statute or otherwise recognized by law not limited or repealed by this section, see section 559 of this title.

Office of Personnel Management, investigations, reports, and regulations for purposes of this section, see section 1305 of this title.

Subsequent statutes to be held to supersede or modify this section only to the extent that they do so expressly, see section 559 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 559, 1305 of this title; title 15 section 1715; title 29 section 661; title 42 sections 2000e-4, 3608.

§ 5373. Limitation on pay fixed by administrative action

Except as provided by the Government Employees Salary Reform Act of 1964 (78 Stat. 400) and notwithstanding the provisions of other statutes, the head of an Executive agency or military department who is authorized to fix by administrative action the annual rate of basic pay for a position or employee may not fix the rate at more than the maximum rate for GS-18. This section does not impair the authorities provided by—

(1) section 121 of title 2, Canal Zone Code (76A Stat. 15);

(2) sections 248, 481, and 1819 of title 12;
(3) section 831b of title 16; or
(4) sections 403a–403c, 403e–403h, and 403j of title 50.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, § 5363, renumbered Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
	5 U.S.C. 2212	Aug. 14, 1964, Pub. L. 88–426, § 308, 78 Stat. 432. Oct. 6, 1964, Pub. L. 88–631, § 3(e), 78 Stat. 1008.

The words "head of an Executive agency or military department" are coextensive with and substituted for "head of any executive department, independent establishment, or agency in the executive branch" because of the definitions in sections 102 and 105.

Standard changes are made to conform to the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Government Employees Salary Reform Act of 1964 (78 Stat. 400), referred to in text, is Pub. L. 88–426, Aug. 14, 1964, 78 Stat. 400, as amended. For distribution of this Act in the Code, see Tables.

GS–18, referred to in text, is set out under section 5332 of this title.

CROSS REFERENCE

Secretary of Defense authorized to prescribe salary schedules for civilian faculty and staff of Uniformed Services University of the Health Sciences so as to place employees of the University on a comparable basis with employees of fully accredited schools of the health professions in vicinity of District of Columbia, see section 2113 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5382 of this title.

§ 5374. Miscellaneous positions in the executive branch

The head of the agency concerned shall fix the annual rate of basic pay for each position in the executive branch specifically referred to in, or covered by, a conforming change in statute made by section 305 of the Government Employees Salary Reform Act of 1964 (78 Stat. 422), or other position in the executive branch for which the annual pay is fixed at a rate of $18,500 or more under special provision of statute enacted before August 14, 1964, which is not placed in a level of the Executive Schedule set forth in subchapter II of this chapter, at a rate equal to the pay rate of a grade and step of the General Schedule set forth in section 5332 of this title. The head of the agency concerned shall report each action taken under this section to the Office of Personnel Management and publish a notice thereof in the Federal Register, except when the President determines that the report and publication would be contrary to the interest of national security.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, § 5364, renumbered and amended Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1221, 1224.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
	5 U.S.C. 2213	Aug. 14, 1964, Pub. L. 88–426, § 309, 78 Stat. 433.

The word "office" is omitted as included in "position". The words "before August 14, 1964" are substituted for "prior to the date of enactment of this Act". The words "pursuant to section 303 of this Act" are omitted as surplusage.

Standard changes are made to conform to the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 305 of the Government Employees Salary Reform Act of 1964, referred to in text, means section 305 of Pub. L. 88–426, Aug. 14, 1964. For complete classification of this section to the Code, see Tables.

AMENDMENTS

1978—Pub. L. 95–454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5375. Police force of National Zoological Park

The Secretary of the Smithsonian Institution shall fix the per annum rates of basic pay of positions on the police force of the National Zoological Park in accordance with the following provisions:

(1) Private—not more than the rate for GS–7, Step 5;

(2) Sergeant—not more than the rate for GS–8, Step 5;

(3) Lieutenant—not more than the rate for GS–9, Step 5;

(4) Captain—not more than the rate for GS–10, Step 5.

(Added Pub. L. 91–34, § 1(a), June 30, 1969, 83 Stat. 41, § 5365, amended Pub. L. 94–183, § 2(20), Dec. 31, 1975, 89 Stat. 1058, and renumbered Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.)

REFERENCES IN TEXT

GS–7 to GS–10, referred to in pars. (1) to (4), respectively, are set out under section 5332 of this title.

AMENDMENTS

1975—Pub. L. 94–183 deleted "(a)" at the beginning of the section.

EFFECTIVE DATE

Section 3(a) of Pub. L. 91–34 provided that: "The foregoing provisions of this Act [which enacted this section and amended sections 5102 and 5109 of this title and section 193n of Title 40, Public Buildings, Property, and Works] shall become effective at the beginning of the first pay period which commences on or after the date of enactment of this Act [June 30, 1969]."

REDUCTION OF BASIC PAY RATE

Section 3(b) of Pub. L. 91–34 provided that: "No rate of basic pay shall be reduced by reason of the enactment of this Act [which enacted this section and

amended sections 5102 and 5109 of this title and section 193n of Title 40, Public Buildings, Property, and Works]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5102 of this title; title 40 section 193n.

SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

§ 5381. Definitions

For the purpose of this subchapter, "agency", "Senior Executive Service position", and "senior executive" have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95–454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1171.)

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415(a)(1), (b) of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

§ 5382. Establishment and adjustment of rates of pay for the Senior Executive Service

(a) There shall be 5 or more rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates. The rates of basic pay shall be initially established and thereafter adjusted by the President subject to subsection (b) of this section.

(b) In setting rates of basic pay, the lowest rate for the Senior Executive Service shall not be less than the minimum rate of basic pay payable for GS–16 of the General Schedule and the highest rate shall not exceed the rate for level IV of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5308 or 5373 of this title.

(c) Subject to subsection (b) of this section, effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title in the rates of pay under the General Schedule, each rate of basic pay for the Senior Executive Service shall be adjusted by an amount determined by the President to be appropriate. The adjusted rates of basic pay for the Senior Executive Service shall be included in the report transmitted to the Congress by the President under section 5305 (a)(3) or (c)(1) of this title.

(d) The rates of basic pay that are established and adjusted under this section shall be printed in the Federal Register and shall supersede any prior rates of basic pay for the Senior Executive Service.

(Added Pub. L. 95–454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1171.)

REFERENCES IN TEXT

GS–16 of the General Schedule, referred to in subsec. (b), is set out under section 5332 of this title.

Level IV of the Executive Schedule, referred to in subsec. (b), is set out in section 5315 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4507, 5383, 5384 of this title.

§ 5383. Setting individual senior executive pay

(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, which of the rates established under section 5382 of this title shall be paid to each senior executive under such appointing authority.

(b) In no event may the aggregate amount paid to a senior executive during any fiscal year under sections 4507, 5382, and 5384 of this title exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such fiscal year.

(c) Except for any pay adjustment under section 5382 of this title, the rate of basic pay for any senior executive may not be adjusted more than once during any 12-month period.

(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only if the career appointee receives a written notice of the reduction at least 15 days in advance of the reduction.

(Added Pub. L. 95–454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1171.)

REFERENCES IN TEXT

Level I of the Executive Schedule, referred to in subsec. (b), is set out in section 5312 of this title.

§ 5384. Performance awards in the Senior Executive Service

(a)(1) To encourage excellence in performance by career appointees, performance awards shall be paid to career appointees in accordance with the provisions of this section.

(2) Such awards shall be paid in a lump sum and shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 4507 of this title.

(b)(1) No performance award under this section shall be paid to any career appointee whose performance was determined to be less than fully successful at the time of the appointee's most recent performance appraisal and rating under subchapter II of chapter 43 of this title.

(2) The amount of a performance award under this section shall be determined by the agency head but may not exceed 20 percent of the career appointee's rate of basic pay.

(3) The number of career appointees in any agency paid performance awards under this section during any fiscal year may not exceed 50 percent of the number of Senior Executive Service positions in such agency. This paragraph shall not apply in the case of any agency which has less than 4 Senior Executive Service positions.

(c) Performance awards paid by any agency under this section shall be based on recommendations by performance review boards established by such agency under section 4314 of this title.

(d) The Office of Personnel Management may issue guidance to agencies concerning the pro-

portion of Senior Executive Service salary expenses that may be appropriately applied to payment of performance awards and the distribution of awards.

(Added Pub. L. 95–454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1172.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4314, 4507, 5383 of this title.

§ 5385. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95–454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1172.)

CHAPTER 54—MERIT PAY AND CASH AWARDS

Sec.
5401. Purpose.
5402. Merit pay system.
5403. Cash award program.
5404. Report.
5405. Regulations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5361, 5362, 5363 of this title.

§ 5401. Purpose

(a) It is the purpose of this chapter to provide for—

(1) a merit pay system which shall—

(A) within available funds, recognize and reward quality performance by varying merit pay adjustments;

(B) use performance appraisals as the basis for determining merit pay adjustments;

(C) within available funds, provide for training to improve objectivity and fairness in the evaluation of performance; and

(D) regulate the costs of merit pay by establishing appropriate control techniques; and

(2) a cash award program which shall provide cash awards for superior accomplishment and special service.

(b)(1) Except as provided in paragraph (2) of this subsection, this chapter shall apply to any supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively) who is in a position which is in GS–13, 14, or 15 of the General Schedule described in section 5104 of this title.

(2)(A) Upon application under subparagraph (C) of this paragraph, the President may, in writing, exclude an agency or any unit of an agency from the application of this chapter if the President considers such exclusion to be required as a result of conditions arising from—

(i) the recent establishment of the agency or unit, or the implementation of a new program,

(ii) an emergency situation, or

(iii) any other situation or circumstance.

(B) Any exclusion under this paragraph shall not take effect earlier than 30 calendar days after the President transmits to each House of the Congress a report describing the agency or unit to be excluded and the reasons therefor.

(C) An application for exclusion under this paragraph of an agency or any unit of an agency shall be filed by the head of the agency with the Office of Personnel Management, and shall set forth reasons why the agency or unit should be excluded from this chapter. The Office shall review the application and reasons, undertake such other review as it considers appropriate to determine whether the agency or unit should be excluded from the coverage of this chapter, and upon completion of its review, recommend to the President whether the agency or unit should be so excluded.

(D) Any agency or unit which is excluded pursuant to this paragraph shall, insofar as practicable, make a sustained effort to eliminate the conditions on which the exclusion is based.

(E) The Office shall periodically review any exclusion from coverage and may at any time recommend to the President that an exclusion under this paragraph be revoked. The President may at any time revoke, in writing, any exclusion under this paragraph.

(Added Pub. L. 95–454, title V, § 501, Oct. 13, 1978, 92 Stat. 1180.)

REFERENCES IN TEXT

GS–13, 14, or 15 of the General Schedule, referred to in subsec. (b)(1), are set out under section 5332 of this title.

EFFECTIVE DATE

Section 504(a) of Pub. L. 95–454 provided that: "The provisions of this title [enacting this chapter, amending sections 4501 to 4504, 4506, 5332 and 5334 to 5336 of this title, and enacting provision set out as a note under section 5404 of this title] shall take effect on the first day of the first applicable pay period which begins on or after October 1, 1981, except that such provisions may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5402, 5404 of this title.

§ 5402. Merit pay system

(a) In accordance with the purpose set forth in section 5401(a)(1) of this title, the Office of Personnel Management shall establish a merit pay system which shall provide for a range of basic pay for each grade to which the system applies, which range shall be limited by the minimum and maximum rates of basic pay payable for each grade under chapter 53 of this title.

(b)(1) Under regulations prescribed by the Office, the head of each agency may provide for increases within the range of basic pay for any employee covered by the merit pay system.

(2) Determinations to provide pay increases under this subsection—

(A) may take into account individual performance and organizational accomplishment, and

(B) shall be based on factors such as—

(i) any improvement in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

(ii) cost efficiency;

(iii) timeliness of performance; and

(iv) other indications of the effectiveness, productivity, and quality of performance of the employees for whom the employee is responsible;

(C) shall be subject to review only in accordance with and to the extent provided by procedures established by the head of the agency; and

(D) shall be made in accordance with regulations issued by the Office which relate to the distribution of increases authorized under this subsection.

(3) For any fiscal year, the head of any agency may exercise authority under paragraph (1) of this subsection only to the extent of the funds available for the purpose of this subsection.

(4) The funds available for the purpose of this subsection to the head of any agency for any fiscal year shall be determined before the beginning of the fiscal year by the Office on the basis of the amount estimated by the Office to be necessary to reflect—

(A) within-grade step increases and quality step increases which would have been paid under subchapter III of chapter 53 of this title during the fiscal year to the employees of the agency covered by the merit pay system if the employees were not so covered; and

(B) adjustments under section 5305 of this title which would have been paid under such subchapter during the fiscal year to such employees if the employees were not so covered, less an amount reflecting the adjustment under subsection (c)(1) of this section in rates of basic pay payable to the employees for the fiscal year.

(c)(1) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title, the rate of basic pay for any position under this chapter shall be adjusted by an amount equal to the greater of—

(A) one-half of the percentage of the adjustment in the annual rate of pay which corresponds to the percentage generally applicable to positions not covered by the merit pay system in the same grade as the position; or

(B) such greater amount of such percentage of such adjustment in the annual rate of pay as may be determined by the Office.

(2) Any employee whose position is brought under the merit pay system shall, so long as the employee continues to occupy the position, be entitled to receive basic pay at a rate of basic pay not less than the rate the employee was receiving when the position was brought under the merit pay system, plus any subsequent adjustment under paragraph (1) of this subsection.

(3) No employee to whom this chapter applies may be paid less than the minimum rate of basic pay of the grade of the employee's position.

(d) Under regulations prescribed by the Office, the benefit of advancement through the range of basic pay for a grade shall be preserved for any employee covered by the merit pay system whose continuous service is interrupted in the public interest by service with the armed forces, or by service in essential non-Government civilian employment during a period of war or national emergency.

(e) For the purpose of section 5941 of this title, rates of basic pay of employees covered by the merit pay system shall be considered rates of basic pay fixed by statute.

(Added Pub. L. 95–454, title V, § 501, Oct. 13, 1978, 92 Stat. 1181.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4501, 5332, 5334, 5335, 5336, 5362, 5403 of this title.

§ 5403. Cash award program

(a) The head of any agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

(2) performs a special act or service in the public interest in connection with or related to the employee's Federal employment.

(b) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to the employee's Federal employment.

A Presidential cash award may be in addition to an agency cash award under subsection (a) of this section.

(c) A cash award to any employee under this section is in addition to the basic pay of the employee under section 5402 of this title. Acceptance of a cash award under this section constitutes an agreement that the use by the Government of any idea, method, or device for which the award is made does not form the basis of any claim of any nature against the Government by the employee accepting the award, or the employee's heirs or assigns.

(d) A cash award to, and expenses for the honorary recognition of, any employee covered by the merit pay system may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention, superior accomplishment, or other meritorious

effort of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to any agency cash award under subsection (a) of this section. The President shall determine the amount to be contributed by each activity to a Presidential award under subsection (b) of this section.

(e)(1) Except as provided in paragraph (2) of this subsection, a cash award under this section may not exceed $10,000.

(2) If the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort of an employee for which a cash award is proposed is highly exceptional and unusually outstanding, a cash award in excess of $10,000 but not in excess of $25,000 may be awarded to the employee on the approval of the Office.

(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, invention, superior accomplishment, or other meritorious effort of the employee for which the award is proposed was made or performed while the employee was covered by the merit pay system.

(Added Pub. L. 95-454, title V, § 501, Oct. 13, 1978, 92 Stat. 1182.)

§ 5404. Report

The Office of Personnel Management shall include in each annual report required by section 1308(a) of this title a report on the operation of the merit pay system and the cash award program established under this chapter. The report shall include—

(1) an analysis of the cost and effectiveness of the merit pay system and the cash award program; and

(2) a statement of the agencies and units excluded from the coverage of this chapter under section 5401(b)(2) of this title, the reasons for which each exclusion was made, and whether the exclusion continues to be warranted.

(Added Pub. L. 95-454, title V, § 501, Oct. 13, 1978, 92 Stat. 1183.)

ADDITIONAL REPORTING REQUIREMENTS

Section 504(b) of Pub. L. 95-454 provided that: "The Director of the Office of Personnel Management shall include in the first report required under section 5404 of title 5, United States Code (as added by this title), information with respect to the progress and cost of the implementation of the merit pay system and the cash award program established under chapter 54 of such title (as added by this title)."

§ 5405. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.

(Added Pub. L. 95-454, title V, § 501, Oct. 13, 1978, 92 Stat. 1183.)

CHAPTER 55—PAY ADMINISTRATION

SUBCHAPTER II—WITHHOLDING PAY

Sec.
5520. Withholding of city or county income or employment taxes.

SUBCHAPTER IV—DUAL PAY AND DUAL EMPLOYMENT

5532. Employment of retired members of the uniformed services; reduction in retired or retainer pay.

SUBCHAPTER V—PREMIUM PAY

5550a. Compensatory time off for religious observances.

AMENDMENTS

1978—Pub. L. 95-454, title III, § 308(f)(2), Oct. 13, 1978, 92 Stat. 1151, in item 5532 substituted "members of the uniformed services; reduction in retired or retainer pay" for "officers of the uniformed services; reduction in retired or retirement pay; exceptions".

Pub. L. 95-390, title IV, § 401(b), Sept. 29, 1978, 92 Stat. 762, added item 5550a.

1977—Pub. L. 95-30, title IV, § 408(b), May 23, 1977, 91 Stat. 157, substituted "city or county" for "city" in item 5520.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5362 of this title.

SUBCHAPTER I—GENERAL PROVISIONS

§ 5504. Biweekly pay periods; computation of pay

(a) The pay period for an employee covers two administrative workweeks. For the purpose of this subsection, "employee" means—

[*See main edition for text of (1) to (3)*]

but does not include—

[*See main edition for text of (A)*]

(B) an employee or individual excluded from the definition of employee in section 5541(2) of this title other than an employee or individual excluded by section 5541(2)(xvi) of this section.[1]

[*See main edition for text of (b)*].

(c) The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this section insofar as this section affects employees in or under an Executive agency.

(As amended Pub. L. 95-454, title IV, § 408(a)(1), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1173, 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 408(a)(1), inserted in par. (B) reference to an employee or individual excluded by section 5541(2)(xvi).

Subsec. (c). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 408(a)(1) of Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congres-

[1] So in original. Probably should be "title".

sional review of provisions of sections 401 through 415 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

Amendment by section 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5332, 5505 of this title; title 2 section 142e; title 40 sections 166b–1d, 166b–1e.

§ 5505. Monthly pay periods; computation of pay

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 142e; title 26 section 7443.

§ 5509. Appropriations

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 95–454, title IX, § 903, Oct. 13, 1978, 92 Stat. 1224, provided that: "There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act [For classification of Pub. L. 95–454, see Tables]."

SUBCHAPTER II—WITHHOLDING PAY

CROSS REFERENCES

Enforcement of legal obligations to provide child support and make alimony payments, see section 659 of Title 42, The Public Health and Welfare.

§ 5520. Withholding of city or county income or employment taxes

(a) When a city or county ordinance—

(1) provides for the collection of a tax by imposing on employers generally the duty of withholding sums from the pay of employees and making returns of the sums to a designated city or county officer, department, or instrumentality; and

(2) imposes the duty to withhold generally on the payment of compensation earned within the jurisdiction of the city or county in the case of employees whose regular place of employment is within such jurisdiction;

the Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the city or county within 120 days of a request for agreement by the proper city or county official. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of the city or county ordinance in the case of any employee of the agency who is subject to the tax and (i) whose regular place of Federal employment is within the jurisdiction of the city or county with which the agreement is made or (ii) is a resident of such city or county. The agreement may not apply to pay for service as a member of the Armed Forces. The agreement may not permit withholding of a city or county tax from the pay of an employee who is not a resident of, or whose regular place of Federal employment is not within, the State in which that city or county is located unless the employee consents to the withholding.

(b) This section does not give the consent of the United States to the application of an ordinance which imposes more burdensome requirements on the United States than on other employers or which subjects the United States or its employees to a penalty or liability because of this section. An agency of the United States may not accept pay from a city or county for services performed in withholding city or county income or employment taxes from the pay of employees of the agency.

(c) For the purpose of this section—

(1) "city" means any unit of general local government which—

(A) is classified as a municipality by the Bureau of the Census, or

(B) is a town or township which, in the determination of the Secretary of the Treasury—

(i) possesses powers and performs functions comparable to those associated with municipalities,

(ii) is closely settled, and

(iii) contains within its boundaries no incorporated places, as defined by the Bureau of the Census,

within the political boundaries of which 500 or more persons are regularly employed by all agencies of the Federal Government;

(2) "county" means any unit of local general government which is classified as a county by the Bureau of the Census and within the political boundaries of which 500 or more persons are regularly employed by all agencies of the Federal Government;

(3) "ordinance" means an ordinance, order, resolution, or similar instrument which is duly adopted and approved by a city or county in accordance with the constitution and statutes of the State in which it is located and which has the force of law within such city or county; and

(4) "agency" means—

(A) an Executive agency;

(B) the judicial branch; and

(C) the United States Postal Service.

(As amended Pub. L. 95–30, title IV, § 408(a), May 23, 1977, 91 Stat. 157; Pub. L. 95–365, § 1, Sept. 15, 1978, 92 Stat. 599.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–365 designated existing provisions as cl. (i), and added cl. (ii) and ", or whose regular place of Federal employment is not within," following "not a resident of".

1977—Pub. L. 95–30, § 408(a)(1), inserted "or county" after "city" in the section catchline.

Subsec. (a). Pub. L. 95–30, § 408(a)(2), (3), substituted "city or county" for "city" in the introductory provisions preceding par. (1), in par. (2), and in the provisions following par. (2), and, in par. (1), substituted "a designated city or county officer, department, or instrumentality" for "the city".

Subsec. (b). Pub. L. 95–30, § 408(a)(2), substituted "city or county" for "city".

Subsec. (c). Pub. L. 95–30, § 408(a)(4), (5), added pars. (2) and (3), and redesignated former par. (2) as (4).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2 of Pub. L. 95–365 provided that: "The amendments made by the first section of this Act [amending subsec. (a) of this section] shall take effect

on the 90th day after the date of the enactment of this Act [Sept. 15, 1978]."

EFFECTIVE DATE OF 1977 AMENDMENT

Section 408(c) of Pub. L. 95-30 provided that: "The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [May 23, 1977]."

EXECUTIVE ORDER No. 11968

Ex. Ord. No. 11968, Jan. 31, 1977, 42 F.R. 6787, set out as a note under this section in the 1976 edition of this Code, which related to the withholding of District of Columbia, state and city income or employment taxes, was revoked by Ex. Ord. No. 11997, June 22, 1977, 42 F.R. 31759, set out as a note below.

EX. ORD. NO. 11997. WITHHOLDING OF DISTRICT OF COLUMBIA, STATE, CITY AND COUNTY INCOME OR EMPLOYMENT TAXES

Ex. Ord. No. 11997, June 22, 1977, 42 F.R. 31759, provided:

By virtue of the authority vested in me by Sections 5516, 5517 and 5520 of Title 5 of the United States Code, and Section 301 of Title 3 of the United States Code, and as President of the United States of America, in order to authorize the Secretary of the Treasury to provide for the withholding of county income or employment taxes as authorized by Section 5520 of Title 5 of the United States Code as amended by Section 408 of Public Law 95-30, as well as to provide for the withholding of District of Columbia, State and city income or employment taxes, it is hereby ordered as follows:

SECTION 1. Whenever the Secretary of the Treasury enters into an agreement pursuant to Sections 5516, 5517 or 5520 of Title 5 of the United States Code, with the District of Columbia, a State, a city or a county, as the case may be, with regard to the withholding, by an agency of the United States, hereinafter referred to as an agency, of income or employment taxes from the pay of Federal employees or members of the Armed Forces, the Secretary of the Treasury shall ensure that each agreement is consistent with those sections and regulations, including this Order, issued thereunder.

SEC. 2. Each agreement shall provide (a) when tax withholding shall begin, (b) that the head of an agency may rely on the withholding certificate of an employee or a member of the Armed Forces in withholding taxes, (c) that the method for calculating the amount to be withheld for District of Columbia, State, city or county income or employment taxes shall produce approximately the tax required to be withheld by the District of Columbia or State law; or city or county ordinance, whichever is applicable, and (d) that procedures for the withholding, filing of returns, and payment of the withheld taxes to the District of Columbia, a State, a city or a county shall conform to the usual fiscal practices of agencies. Any agreement affecting members of the Armed Forces shall also provide that the head of an agency may rely on the certificate of legal residence of a member of the Armed Forces in determining his or her residence for tax withholding purposes. No agreement shall require the collection by an agency of delinquent tax liabilities of an employee or a member of the Armed Forces.

SEC. 3. The head of each agency shall designate, or provide for the designation of, the officers or employees whose duty it shall be to withhold taxes, file required returns, and direct payment of the taxes withheld, in accordance with this Order, any regulations prescribed by the Secretary of the Treasury, and the new applicable agreement.

SEC. 4. The Secretary of the Treasury is authorized to prescribe additional regulations to implement Sections 5516, 5517 and 5520 of Title 5 of the United States Code, and this Order.

SEC. 5. Executive Order No. 11968 of January 31, 1977, is hereby revoked. However, all actions heretofore taken by the President or his delegates in respect of the matters affected by this Order and in force at the time of the issuance of this Order, including any regulations prescribed or approved by the President or his delegates in respect of such matters and any existing agreements approved by his delegates, shall, except as they may be inconsistent with the provisions of this Order, remain in effect until amended, modified, or revoked pursuant to the authority conferred by this Order, unless sooner terminated by operation of law.

JIMMY CARTER.

SUBCHAPTER III—ADVANCEMENT, ALLOTMENT, AND ASSIGNMENT OF PAY

§ 5527. Regulations

EX. ORD. NO. 10982. ADMINISTRATION OF PROVISIONS OF CHAPTER

Ex. Ord. No. 10982, Dec. 25, 1961, 27 F.R. 3, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[See main edition for text of first par. and sec. 1]

SEC. 2. (a) Except as otherwise provided by section 2(b) and section 3(c) of this order, the Secretary of State in respect of civilian employees of Federal agencies who are located in foreign areas immediately prior to an emergency evacuation, and the Office of Personnel Management in respect of all other civilian employees of Federal agencies, are hereby designated and empowered, without the approval, ratification, or other action of the President, to perform the functions conferred upon the President by section 3(a), section 3(b), and section 6(a) of the act [now sections 5523(a) and 5523(b) of this title and subsec. (a) of this section].

(b) The Office of Personnel Management is hereby designated and empowered, without the approval, ratification, or other action of the President, to perform the functions conferred upon the President by the provisions of section 6 of the act [now this section] with respect to allotments and assignments authorized by section 5 of the act [now section 5525 of this title].

SEC. 3. The following regulations are hereby prescribed as necessary and appropriate to carry out the provisions, accomplish the purposes, and govern the administration of the act:

(a) To the maximum extent practicable, the Secretary of State, the Office of Personnel Management, and the heads of other Federal agencies shall exercise their authority under the act and this order so that employees of different Federal agencies evacuated from the same geographic area under the same general circumstances may be treated uniformly.

[See main edition for text of (b)]

(c) It is hereby determined to be in the interest of the United States that payments of monetary amounts as authorized by section 3 of the act [now section 5523 of this title] to and for the account of an employee whose evacuation is ordered and who is prevented from performing the duties of his position, under the circumstances set forth in section 3 of the act [now section 5523 of this title], should be extended beyond sixty days for not more than one hundred and twenty additional days only upon determination, pursuant to regulations of the head of the Federal agency concerned, that such additional payments are reasonably necessary to maintain a civilian staff available for performance of duty. Such payments of monetary amounts under the authority of section 3 of the act [now section 5523 of this title] shall be terminated as of such dates as may be determined by the Secretary of State or the Office of Personnel Management, as appropriate, but not later than the date on which an

employee resumes his duties at the post from which he has been evacuated or is assigned to another position.

SEC. 4. (a) The head of each Federal agency shall issue as soon as practicable such regulations as may be necessary and appropriate to carry out his functions under the act and this order.

(b) In order to coordinate the policies and procedures of the executive branch of the Government, all regulations of any Federal agency prepared for issuance under the provisions of section 6(c) of the act [now subsection (c) of this section] and section 4(a) of this order shall be submitted for prior approval to the Secretary of State, or to the Office of Personnel Management, as may be appropriate, under section 2 of this order. The Secretary of State and the Office of Personnel Management shall review such regulations for conformance with the purpose and intent of the act and of the regulations contained in section 3 of this order. No Federal agency shall make any payment under the provisions of the act or this order until such regulations have been approved by the Secretary of State, or the Office of Personnel Management, as appropriate.

SUBCHAPTER IV—DUAL PAY AND DUAL EMPLOYMENT

§ 5531. Definitions

For the purpose of sections 5532 and 5533 of this title—

(1) "member" has the meaning given such term by section 101(23) of title 37;

(2) "position" means a civilian office or position (including a temporary, part-time, or intermittent position), appointive or elective, in the legislative, executive, or judicial branch of the Government of the United States (including a Government corporation and a nonappropriated fund instrumentality under the jurisdiction of the armed forces) or in the government of the District of Columbia; and

(3) "retired or retainer pay" means retired pay, as defined in section 8311(3) of this title, determined without regard to subparagraphs (B) through (D) of such section 8311(3); except that such term does not include an annuity payable to an eligible beneficiary of a member or former member of a uniformed service under chapter 73 of title 10.

(As amended Pub. L. 95–454, title III, § 308(b), Oct. 13, 1978, 92 Stat. 1150.)

AMENDMENTS

1978—Pub. L. 95–454 in par. (1) substituted "'member'" for "'officer'" and added par. (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5532. Employment of retired members of the uniformed services; reduction in retired or retainer pay

[See main edition for text of (a)]

(b) A retired officer of a regular component of a uniformed service who holds a position is entitled to receive the full pay of the position, but during the period for which he receives pay, his retired or retainer pay shall be reduced to an annual rate equal to the first $2,000 of the retired or retainer pay plus one-half of the remainder, if any. In the operation of the formula for the reduction of retired or retainer pay under this subsection, the amount of $2,000 shall be increased, from time to time, by appropriate percentage, in direct proportion to each increase in retired or retainer pay under section 1401a(b) of title 10 to reflect changes in the Consumer Price Index.

(c)(1) If any member or former member of a uniformed service is receiving retired or retainer pay and is employed in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired or retainer pay (reduced as provided under subsection (b) of this section), exceeds the rate of basic pay then currently paid for level V of the Executive Schedule, such member's retired or retainer pay shall be reduced by an amount computed under paragraph (2) of this subsection. The amounts of the reductions shall be deposited to the general fund of the Treasury of the United States.

(2) The amount of each reduction under paragraph (1) of this subsection allocable for any pay period in connection with employment in a position shall be equal to the retired or retainer pay allocable to the pay period (reduced as provided under subsection (b) of this section), except that the amount of the reduction may not result in—

(A) the amount of retired or retainer pay allocable to the pay period after being reduced, when combined with the basic pay for the employment during the pay period, being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule; or

(B) the amount of retired pay or retainer pay being reduced to an amount less than the amount deducted from the retired or retainer pay as a result of participation in any survivor's benefits in connection with the retired or retainer pay or veterans insurance programs.

(d) The reduction in retired or retainer pay required by this section does not apply to a member or former member of a uniformed service who is receiving retired or retainer pay—

(1) whose retired or retainer pay is computed, in whole or in part, based on disability—

(A) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(B) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by sections 101 and 301 of title 38; or

(2) employed on a temporary (full-time or part-time) basis, any other part-time basis, or an intermittent basis, for the first 30-day period for which he receives pay.

The exemption from reduction in retired or retainer pay under paragraph (2) of this subsection does not apply longer than—

(i) the first 30-day period for which he receives pay under one appointment from the position in which he is employed, if he is serving under not more than one appointment; and

(ii) the first period for which he receives pay under more than one appointment, in a fiscal year, which consists in the aggregate of 30 days, from all positions in which he is employed, if he is serving under more than one appointment in that fiscal year.

(e) The Office of Personnel Management may, during the 5-year period after the effective date of the Civil Service Reform Act of 1978 authorize exceptions to the restrictions in subsections (a), (b), and (c) of this section only when necessary to meet special or emergency employment needs which result from a severe shortage of well qualified candidates in positions of medical officers which otherwise cannot be readily met. An exception granted by the Office with respect to any individual shall terminate upon a break in service of 3 days or more.

(As amended Pub. L. 95-454, title III, § 308(a), (c)-(f)(1), Oct. 13, 1978, 92 Stat. 1149-1151.)

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (c)(1), (2)(A), is set out in section 5316 of this title.

The effective date of the Civil Service Reform Act of 1978, referred to in subsec. (e), is 90 days after the date of the enactment of Pub. L. 95-454, which was approved Oct. 13, 1978.

AMENDMENTS

1978—Pub. L. 95-454, § 308(f)(1), in the section catchline substituted "members of the uniformed services; reduction in retired or retainer pay" for "officers of the uniformed services; reduction in retired or retirement pay; exceptions".

Subsec. (b). Pub. L. 95-454, § 308(e), substituted "or retainer" for "or retirement" wherever appearing.

Subsec. (c). Pub. L. 95-454, § 308(a), added subsec. (c). and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 95-454, § 308(a), (c), redesignated former subsec. (c) as (d) and, as redesignated, substituted provisions respecting retainer pay, for provisions respecting retirement pay, struck out reference to requirements under subsec. (b) of this section, and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 95-454, § 308(a), (d), redesignated former subsec. (d) as (e) and, as redesignated, substituted provisions relating to functions of the Office of Personnel Management under this section with respect to exceptions from restrictions, for provisions relating to functions of the Civil Service Commission under this section with respect to exceptions from restrictions under former subsec. (b) of this section.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

DUAL PAY REQUIREMENTS FOR PAY PERIODS SUBSEQUENT TO ENACTMENT OF CIVIL SERVICE ACT OF 1978

Section 308(g) of Pub. L. 95-454 provided that:

"(1) Except as provided in paragraph (2) of this subsection, the amendments made by this section [amending this section and section 5531 of this title] shall apply only with respect to pay periods beginning after the effective date of this Act [see Effective Date note set out under section 1101 of this title] and only with respect to members of the uniformed services who first receive retired or retainer pay (as defined in section 5531(3) of title 5, United States Code (as amended by this section)), after the effective date of this Act.

"(2) Such amendments shall not apply to any individual employed in a position on the date of the enactment of this Act [Oct. 13, 1978] so long as the individual continues to hold any such position (disregarding any break in service of 3 days or less) if the individual, on that date, would have been entitled to retired or retainer pay but for the fact the individual does not satisfy any applicable age requirement.

"(3) The provisions of section 5532 of title 5, United States Code, as in effect immediately before the effective date of this Act, shall apply with respect to any retired officer of a regular component of the uniformed services who is receiving retired pay on or before such date, or any individual to whom paragraph (2) applies, in the same manner and to the same extent as if the preceding subsections of this section had not been enacted."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5531, 8116 of this title; title 22 section 2584; title 39 section 410; title 42 section 2038.

§ 5533. Dual pay from more than one position; limitations; exceptions

[*See main edition for text of* (a)]

(b) Except as otherwise provided by subsection (c) of this section, the Office of Personnel Management, subject to the supervision and control of the President, may prescribe regulations under which exceptions may be made to the restrictions in subsection (a) of this section when appropriate authority determines that the exceptions are warranted because personal services otherwise cannot be readily obtained.

[*See main edition for text of* (c) *to* (e)]

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

1978 INCREASE IN COMPENSATION OF INDIVIDUALS WHOSE PAY IS DISBURSED BY THE SECRETARY OF THE SENATE

The figure "$10,540" in subsec. (c)(1) of this section to be deemed to refer, effective Oct. 1, 1978, to the figure "$12,480", see section 9 of the Salary Directive of the President pro tempore of the Senate, Oct. 9, 1978, set out as a note under section 60a-1 of Title 2, The Congress.

1977 INCREASE IN COMPENSATION OF INDIVIDUALS WHOSE PAY IS DISBURSED BY THE SECRETARY OF THE SENATE

The figure "$10,540" in subsec. (c)(1) of this section to be deemed to refer, effective Oct. 1, 1977, to the figure "$11,830", see section 9 of the Salary Directive of the President pro tempore of the Senate, Sept. 27, 1977, set out as a note under section 60a-1 of Title 2.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5531 of this title; title 2 section 162; title 13 section 23; title 15 section 327; title 20 section 907; title 22 section 2396; title 25 section 2011; title 33 section 873; title 39 section 1001.

SUBCHAPTER V—PREMIUM PAY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5926 of this title; title 2 section 167.

§ 5541. Definitions

For the purpose of this subchapter—

[*See main edition for text of (1)*]

(2) "employee" means—

[*See main edition for text of (A) to (C)*]

but does not include—

[*See main edition for text of (i) to (xi)*]

(xii) an employee of the Transportation Corps of the Army on a vessel operated by the United States, a vessel employee of the Environmental Science Services Administration, a vessel employee of the Department of the Interior, or a vessel employee of the Panama Canal Company;

(xiii) a "teacher" or an individual holding a "teaching position" as defined by section 901 of title 20;

(xiv) a "Foreign Service officer" within the meaning of section 401 of the Foreign Service Act of 1946;

(xv) a "Foreign Service information officer" as provided for by the first section of the Act entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps", approved August 20, 1968; or

(xvi) member of the Senior Executive Service.

(As amended Pub. L. 95–105, title IV, § 412(a)(1), Aug. 17, 1977, 91 Stat. 855; Pub. L. 95–426, title II, § 204(b)(5)(B), Oct. 7, 1978, 92 Stat. 974; Pub. L. 95–454, title IV, § 408(a)(2), Oct. 13, 1978, 92 Stat. 1173.)

REFERENCES IN TEXT

Section 401 of the Foreign Service Act of 1946, referred to in par. (2)(xiv), is classified to section 861 of Title 22, Foreign Relations and Intercourse.

The first section of the Act entitled "An Act to promote the foreign policy of the United States by strengthing and improving the Foreign Service personnel system of the United States Information Agency through establishment of a Foreign Service Information Officer Corps", approved August 20, 1968, referred to in par. (2)(xv), is classified to section 1221 of Title 22.

AMENDMENTS

1978—Par. (2). Pub. L. 95–454 added cl. (xvi).

Par. (2)(xv). Pub. L. 95–426 substituted "International Communication Agency" for "United States Information Agency".

1977—Par. (2). Pub. L. 95–105 added cls. (xiv) and (xv).

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

Section 204(b)(5)(B) of Pub. L. 95–426 provided in part that amendment of par. (2)(xv) of this section by Pub. L. 95–426 is effective Oct. 1, 1978.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 412(a)(2) of Pub. L. 95–105 provided that: "The amendments made by paragraph (1) [amending par. (2) of this section] shall take effect on October 1, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5504, 5550a, 6101 of this title.

§ 5545. Night, standby, irregular, and hazardous duty differential

[*See main edition for text of (a) and (b)*]

(c) The head of an agency, with the approval of the Office of Personnel Management, may provide that—

[*See main edition for text of (1) and (2)*]

(d) The Office shall establish a schedule or schedules of pay differentials for irregular or intermittent duty involving unusual physical hardship or hazard. Under such regulations as the Office may prescribe, and for such minimum periods as it determines appropriate, an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential for any period in which he is subjected to physical hardship or hazard not usually involved in carrying out the duties of his position. However, the pay differential—

[*See main edition for text of (1) and (2)*]

(As amended Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95–454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (d). Pub. L. 95–454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5548. Regulations

(a) The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this subchapter, except section 5545(d) insofar as this subchapter affects employees in or under an Executive agency.

(b) The Office shall prescribe regulations necessary for the administration of sections 5545(d) and 5550 of this title.

(As amended Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 5550a. Compensatory time off for religious observances

(a) Not later than 30 days after the date of the enactment of this section, the Civil Service Commission shall prescribe regulations providing for work schedules under which an employee whose personal religious beliefs require the abstention from work during certain periods of time, may elect to engage in overtime work for time lost for meeting those religious requirements. Any employee who so elects such overtime work shall be granted equal compensatory time off from his scheduled tour of duty (in lieu of overtime pay) for such religious reasons, notwithstanding any other provision of law.

(b) In the case of any agency described in subparagraphs (C) through (G) of section 5541(1) of this title, the head of such agency (in lieu of the Commission) shall prescribe the regulations referred to in subsection (a) of this section.

(c) Regulations under this section may provide for such exceptions as may be necessary to efficiently carry out the mission of the agency or agencies involved.

(Added Pub. L. 95-390, title IV, § 401(a), Sept. 29, 1978, 92 Stat. 762.)

REFERENCES IN TEXT

The terms "Civil Service Commission" and "Commission", referred to in subsecs. (a) and (b) were not amended by Pub. L. 94-454, §§ 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224 by substitution of the term "Office of Personnel Management" and "Office", respectively, to reflect the general transfer of functions of the Civil Service Commission to the Office of Personnel Management, pursuant to Reorg. Plan No. 2 of 1978, § 102, F.R. 36037, 92 Stat. 3784, set out under section 1101 of this title.

The date of enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 95-390, which was approved Sept. 29, 1978.

SUBCHAPTER VI—PAYMENT FOR ACCUMULATED AND ACCRUED LEAVE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5948, 8331 of this title; title 38 sections 4107, 4118.

§ 5551. Lump-sum payment for accumulated and accrued leave on separation

[See main edition for text of (a)]

(b) The accumulated and current accrued annual leave to which an officer excepted from subchapter I of chapter 63 of this title by section 6301(2)(x)-(xiii) of this title, is entitled immediately before the date he is excepted under that section shall be liquidated by a lump-sum payment in accordance with subsection (a) of this section or subchapter VIII of this chapter, except that the payment is based on the rate of pay which he was receiving, immediately before the date on which section 6301(2)(x)-(xiii) of this title became applicable to him.

(As amended Pub. L. 95-519, § 2, Oct. 25, 1978, 92 Stat. 1819.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-519 substituted "6301(2)(x)-(xiii)" for "6301(2)(x)-(xii)" in two places.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4 of Pub. L. 95-519 provided that:

"(a) The amendments made by the first section and section 2 of this Act [amending this section and sections 6301, 6302 and 6306 of this title] shall take effect beginning on the first day of the first applicable pay period beginning on or after the date of the enactment of this Act [Oct. 25, 1978].

"(b) The amendment made by section 3 of this Act [amending section 8339 of this title] shall apply only with respect to employees who retire or die on or after the date of the enactment of this Act [Oct. 25, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5552, 5596, 6304, 6306, 8344 of this title; title 20 section 904; title 22 section 1149; title 25 section 2011.

SUBCHAPTER VII—PAYMENTS TO MISSING EMPLOYEES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 18 section 1923; title 22 section 889; title 50 App. section 1291.

SUBCHAPTER VIII—SETTLEMENT OF ACCOUNTS

§ 5582. Designation of beneficiary; order of precedence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5583, 5595 of this title; title 22 section 2504; title 29 section 931; title 42 section 4955.

SUBCHAPTER IX—SEVERANCE PAY AND BACK PAY

§ 5595. Severance pay

(a) For the purpose of this section—

[See main edition for text of (1)]

(2) "employee" means—

[See main edition for text of (A) and (B)]

but does not include—

(i) an employee other than a member of the Senior Executive Service whose rate of basic pay is fixed at a rate provided for one of the levels of the Executive Schedule or is in excess of the minimum rate for GS-18;

[See main edition for text of (ii) to (viii); (b) to (g)]

(As amended Pub. L. 95-454, title IV, § 408(a)(3), Oct. 13, 1978, 92 Stat. 1173.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-454 inserted in cl. (i) reference to a member of the Senior Executive Service.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401

through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as a note under section 3131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3381, 4103, 5948 of this title; title 38 sections 4107, 4118.

§ 5596. Back pay due to unjustified personnel action

[See main edition for text of (a)]

(b)(1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

(i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, shall be awarded in accordance with standards established under section 7701(g) of this title; and

(B) for all purposes, is deemed to have performed service for the agency during that period, except that—

(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

(2) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

(3) For the purpose of this subsection, "grievance" and "collective bargaining agreement" have the meanings set forth in section 7103 of this title, "unfair labor practice" means an unfair labor practice described in section 7116 of this title, and "personnel action" includes the omission or failure to take an action or confer a benefit.

(c) The Civil Service Commission shall prescribe regulations to carry out this section. However, the regulations are not applicable to the Tennessee Valley Authority and its employees.

(As amended Pub. L. 95-454, title VII, § 702, Oct. 13, 1978, 92 Stat. 1216.)

REFERENCES IN TEXT

The term "Civil Service Commission", referred to in subsec. (c) was not amended by section 906(a)(2) of Pub. L. 95-454 by substitution of the term "Office of Personnel Management", to reflect the general transfer of functions of the Civil Service Commission to the Office of Personnel Management, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of this title.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-454 substituted provisions relating to corrective measures applicable to an employee who, on the basis of a timely appeal or an administrative determination, including a decision relative to an unfair labor practice or grievance, is found by an appropriate authority under applicable law, rule, regulation, or collective bargaining agreement to have been affected by an unjustified or unwarranted personnel action, for provisions relating to corrective measures applicable to an employee who, on the basis of an administrative determination or a timely appeal, is found by an appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7118, 7122 of this title.

CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

Sec.
5752. Travel expenses of Senior Executive Service candidates.

AMENDMENTS

1978—Pub. L. 95-454, title IV, § 409(c), Oct. 13, 1978, 92 Stat. 1173, added item 5752.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3396 of this title; title 14 section 193; title 18 section 3168; title 26 section 7471; title 42 section 5816.

SUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES; MILEAGE ALLOWANCES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3375, 3381, 4109, 5354, 5723, 5751 of this title; title 2 section 476; title 7 section 2229; title 10 section 9441; title 15 section 634; title 16 sections 916*l*, 961, 1032; title 21 section 874; title 22 sections 1754, 2024, 2672; title 26 section 7471; title 28 section 792; title 42 sections 1975b, 2477, 4276, 4277; title 48 section 1407h; title 50 App. section 2281.

§ 5701. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 68b; title 7 sections 3128, 3194; title 16 section 971h; title 22 section 1474.

§ 5702. Per diem; employee traveling on official business

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5724a of this title; title 2 sections 58, 68b, 476; title 7 sections 3128, 3194; title 16 section 971h; title 18 section 4285; title 22 sections 1136, 1474, 2396; title 26 sections 274, 4941; title 28 section 1821; title 31 section 1032; title 36 section 121; title 38 section 111; title 42 section 2477.

§ 5703. Per diem, travel, and transportation expenses; experts and consultants; individuals serving without pay

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 573, 5306, 7119 of this title; title 2 sections 175, 352, 475; title 7 sections 2233, 3128, 3194; title 12 sections 635a, 1701j-2, 1701y, 1749bbb-1, 3013; title 15 sections 637, 1204, 1275, 1475, 1942, 2077; title 16 sections 1a-2, 410cc-31, 1105, 1156, 1401, 1403, 1460, 1536, 1604; title 18 section 4351; title 19 section 2171; title 20 sections 929, 955, 957, 959, 963, 1221e, 1233c, 1505, 2012; title 21 sections 360c, 360d, 360e, 360j, 376, 1115; title 22 sections 287o, 287q, 290f, 1471, 1474, 2102, 2103, 2199, 2351, 2456, 2581, 2672b, 2872, 2873, 2903, 2905, 3106; title 25 section 305; title 29 sections 308e, 656, 782, 792, 794b, 1142, 1302; title 30 sections 663, 812, 1229, 1315; title 33 sections 426, 857-16, 1320; title 36 section 121; title 40 sections 333, 486, 822, 872; title 41 section 46; title 42 sections 210, 242*l*, 242n, 254j, 286b, 286c, 287f, 289c-3a, 289c-7, 295d-2, 300d-8, 300j-5, 300k-3, 300v, 907, 1108, 1314, 1320a-1, 1320c-12, 1395dd, 1870, 1873, 1975b, 2473, 2495, 2689q, 2942, 3015, 3211, 3535, 3609, 3742, 3747, 3765, 4025, 4532, 4553, 4768, 4914, 5042, 5105, 5112, 5404, 5651, 5661, 6007, 6614, 6632, 7234, 7417, 7546, 7623; title 44 section 3318; title 46 section 1482; title 47 section 396; title 49 sections 1343, 1657, 1673; title 50 App. section 2168.

§ 5704. Mileage and related allowances

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5707, 5724 of this title; title 2 section 476; title 7 sections 3128, 3194; title 13 sections 24, 26; title 16 section 971h; title 22 section 1474; title 28 section 1821; title 30 sections 812, 1229; title 33 section 1320; title 39 section 111; title 42 section 2477.

§ 5705. Advancements and deductions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5724 of this title; title 7 sections 3128, 3194; title 16 section 971h; title 22 section 1474.

§ 5706. Allowable travel expenses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 3128, 3194; title 16 section 971h; title 22 section 1474.

§ 5707. Regulations and reports

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5702, 5704, 5709 of this title; title 7 sections 3128, 3194; title 16 section 971h; title 22 section 1474; title 40 section 872.

SUBCHAPTER II—TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES, STUDENT TRAINEES, AND TRANSFERRED EMPLOYEES

§ 5721. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 302, 503, 3109, 5913 of this title; title 26 section 912; title 42 section 8241.

§ 5723. Travel and transportation expenses of new appointees and student trainees; manpower shortage positions

(a) Under such regulations as the President may prescribe and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations—

(1) travel expenses of a new appointee, or a student trainee when assigned on completion of college work, to a position in the United States for which the Office of Personnel Management determines there is a manpower shortage or of a new appointee to the Senior Executive Service; and

(2) transportation expenses of his immediate family and his household goods and personal effects to the extent authorized by section 5724 of this title;

from his place of residence at the time of selection or assignment to his duty station. If the travel and transportation expenses of a student trainee were paid when he was appointed, they may not be paid when he is assigned after completion of college work. Travel expenses payable under this subsection may include the per diem and mileage allowances authorized for employees by subchapter I of this chapter. Advances of funds may be made for the expenses authorized by this subsection to the extent authorized by section 5724(f) of this title.

[*See main edition for text of* (b) *and* (c)]

(d) The Office may delegate its authority to determine positions for which there is a manpower shortage for the purpose of this section.

[*See main edition for text of* (e)]

(As amended Pub. L. 95-454, title III, § 305, title IV, § 409(a), title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1147, 1173, 1224.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Pub. L. 95-454, § 409(a), inserted reference to a new appointee to the Senior Executive Service.

Subsec. (d). Pub. L. 95-454, §§ 305, 906(a)(3), struck out "not" preceding "delegate", and substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (a)(1) and (d) by sections 305 and 906(a)(2) and (3) of Pub. L. 95-454 relating to delegation of functions and the Office of Personel Management, respectively, effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Amendment of subsec. (a)(1) by section 409(a) of Pub. L. 95-454 effective 9 months after Oct. 13, 1978,

and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

§ 5724. Travel and transportation expenses of employees transferred; advancement of funds; reimbursement on commuted basis

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3375, 4109, 5723, 5724a, 5726 of this title; title 22 section 966; title 42 section 2891-8.

§ 5724a. Relocation expenses of employees transferred or reemployed

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3375, 5584, 5724 of this title; title 22 section 966; title 42 section 2891-8.

§ 5726. Storage expenses; household goods and personal effects

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3735, 5724, 5724a of this title; title 26 section 912; title 42 section 2891-8.

§ 5731. Expenses limited to lowest first-class rate

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 476; title 16 sections 916*l*, 961, 971h, 1032; title 22 sections 287e, 287r, 1157, 2024; title 42 sections 2477, 4277; title 50 section 403e.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 5752. Travel expenses of Senior Executive Service candidates

Employing agencies may pay candidates for Senior Executive Service positions travel expenses incurred incident to preemployment interviews requested by the employing agency.

(Added Pub. L. 95-454, title IV, § 409(b), Oct. 13, 1978, 92 Stat. 1173.)

CHAPTER 59—ALLOWANCES

SUBCHAPTER III—OVERSEAS DIFFERENTIALS AND ALLOWANCES

Sec.
5926. Compensatory time off at certain posts in foreign areas.

SUBCHAPTER IV—MISCELLANEOUS ALLOWANCES

5948. Physicians comparability allowances.

AMENDMENTS

1978—Pub. L. 95-603, § 2(b), Nov. 6, 1978, 92 Stat. 3020, added item 5948.

Pub. L. 95-426, title IV, § 411(b), Oct. 7, 1978, 92 Stat. 981 added item 5926.

SUBCHAPTER II—QUARTERS

§ 5911. Quarters and facilities; employees in the United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 754; title 29 section 995.

SUBCHAPTER III—OVERSEAS DIFFERENTIALS AND ALLOWANCES

§ 5921. Definitions

EX. ORD. NO. 10903. DELEGATION OF REGULATORY AUTHORITY

Ex. Ord. No. 10903, Jan. 11, 1961, 26 F.R. 217, as amended by Ex. Ord. No. 11228, June 14, 1965, 30 F.R. 7739; Ex. Ord. No. 11230, June 28, 1965, 30 F.R. 8447; Ex. Ord. No. 11380, Nov. 8, 1967, 32 F.R. 15627; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[See main edition for text of first par., secs. 1 to 5]

Sec. 6. This order and such of the regulations prescribed by the Secretary of State, the Director of the Bureau of the Budget, and the Office of Personnel Management thereunder as the Secretary, Director, and Office shall, respectively, determine, shall be published in the FEDERAL REGISTER.

§ 5925. Post differentials

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 2506; title 26 sections 912, 913.

§ 5926. Compensatory time off at certain posts in foreign areas

(a) Under regulations prescribed pursuant to this subchapter, and notwithstanding subchapter V of chapter 55 of this title or any other law, the head of an agency may, on request of an employee serving in a foreign area—

(1) at an isolated post performing functions required to be maintained on a substantially continuous basis, grant the employee compensatory time off for an equal amount of time spent in regularly scheduled overtime work; or

(2) at a post in a locality that customarily observes irregular hours of work or where other special conditions are present, in order to cope with those special circumstances, grant the employee compensatory time off for an equal amount of time spent in regularly scheduled overtime work for use during the pay period in which it is earned.

Credit for compensatory time off earned under paragraph (2) shall not form the basis for any additional compensation.

(b) Compensatory time earned under this section shall be for use only while the employee is assigned to the post where it is earned. Any such compensatory time not used at the time the employee is reassigned to another post shall be forfeited.

(Added Pub. L. 95-426, title IV, § 411(a), Oct. 7, 1978, 92 Stat. 980.)

SUBCHAPTER IV—MISCELLANEOUS ALLOWANCES

§ 5941. Allowances based on living costs and conditions of environment; employees stationed outside continental United States or in Alaska

EX. ORD. NO. 10000. REGULATIONS GOVERNING ADDITIONAL COMPENSATION AND CREDIT GRANTED CERTAIN FEDERAL EMPLOYEES SERVING OUTSIDE THE UNITED STATES

Ex. Ord. No. 10000, Sept. 16, 1948, 13 F.R. 5453, as amended by Ex. Ord. No. 10636, Sept. 16, 1955, 20 F.R. 7025; Ex. Ord. No. 11938, Sept. 29, 1976, 41 F.R. 43383; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

* * * * *

PART II—ADDITIONAL COMPENSATION IN TERRITORIES

* * * * *

SEC. 202. ADDITIONAL COMPENSATION BY REASON OF ENVIRONMENT. The Office of Personnel Management shall from time to time, subject to applicable law, (a) designate places in Territories having conditions of environment which differ substantially from conditions of environment in the United States and warrant additional compensation as a recruitment incentive, (b) fix for each such place the additional rate or rates of compensation to be paid by reason of such environment pursuant to section 207 of the Act, after giving due consideration to the degree of environmental difference, and (c) prescribe such further regulations, governing such compensation, as may be necessary. Additional compensation so fixed is hereafter in this Part referred to as "Territorial post differential."

SEC. 203. BASIS FOR TERRITORIAL POST DIFFERENTIAL. The Office of Personnel Management may establish a Territorial post differential for any place in the Territories when, and only when, the place involves any one or more of the following: (a) extraordinarily difficult living conditions, (b) excessive physical hardship, or (c) notably unhealthful conditions.

* * * * *

SEC. 205. ADDITIONAL LIVING COST COMPENSATION. (a) The Office of Personnel Management shall from time to time, subject to applicable law, (1) designate places in the Territories where it determines that living costs are substantially higher than in the District of Columbia, (2) fix for each place so designated an additional rate or rates of compensation to be paid by reason of such higher living costs pursuant to section 207 of the Act, and (c) prescribe such further regulations, governing such compensation, as may be necessary. Additional compensation so fixed is hereafter in this Part referred to as "Territorial cost-of-living allowance."

(b) The Office of Personnel Management shall, (1) in designating places under section 205(a) hereof, consider the relative consumer price levels in the area and in the District of Columbia, and give due consideration to the differences in goods and services available and to the manner of living of persons employed in the areas concerned in positions comparable to those of the United States employees in the areas, and (2) in fixing the Territorial cost-of-living allowance pursuant to such subsection, make appropriate deductions when quarters or subsistence, commissary or other purchasing privileges are furnished at a cost substantially lower than the prevailing local cost [paragraph (b)(2) suspended by Ex. Ord. No. 12070, June 30, 1978, 43 F.R. 28977, set out as a note below except to the extent that such privileges are furnished as a result of Federal civilian employment].

SEC. 206. COORDINATION. The Office of Personnel Management shall define the extent to which and the conditions under which an employee serving within the Territories may receive both a Territorial post differential and a Territorial cost-of-living allowance, pursuant to section 207 of the Act. In carrying out its functions under this Part the Office may take due notice if any special allowances, other than under section 207 of the act, granted to personnel employed by the United States in Territories.

* * * * *

SEC. 210. PERIODIC REVIEW. The Office of Personnel Management shall periodically, but at least annually, review the places designated, the rates fixed, and the regulations prescribed pursuant to this Part, with a view to making such changes therein as will insure that payment of additional compensation under the provisions of this Part shall continue only during the continuance of conditions justifying such payment and shall not in any instance exceed the amount justified: *Provided*, That if program or methodology revisions would substantially reduce an established differential or allowance rate, then the rate of such additional compensation may be reduced gradually.

PART III—INTERIM ARRANGEMENTS

SEC. 301. TEMPORARY REGULATIONS. During the period commencing with the date of this order or the effective date of section 207 of the Act (as defined in section 101 hereof), whichever shall occur earlier, and ending on a date or dates fixed by the Secretary of State and the Office of Personnel Management, respectively, as the effective dates of the designation of places and of the fixing of additional rates of compensation, under Parts I and II of this order, but in no event later than January 1, 1949, and notwithstanding the provisions of Parts I and II of this order, the payment of salaries and compensation (including the payment of additional compensation) of persons subject to the provisions of said section 207 shall be governed by the regulations and practices in effect in the respective Executive departments, independent establishments, and wholly owned government corporations immediately prior to April 20, 1948. Executive Order No. 9962 of May 24, 1948 is hereby revoked.

* * * * *

PART VI—GENERAL PROVISIONS

SEC. 601. PUBLICATION. This order, and the places designated, the rates fixed, and the regulations prescribed by the Secretary of State and the Office of Personnel Management pursuant to Parts I and II of this order, shall be published in the Federal Register.

EX. ORD. NO. 12070. ADJUSTMENT OF COST OF LIVING ALLOWANCES

Ex. Ord. No. 12070, June 30, 1978, 43 F.R. 28977, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By the authority vested in me as President of the United States of America by Section 5941 of Title 5 of the United States Code, and in order to authorize the temporary restoration of the cost of living allowance to certain employees, it is hereby ordered as follows:

1-1. SUSPENSION OF APPLICABLE REQUIREMENTS

1-101. The requirement of Section 205(b)(2) of Executive Order No. 10000, as amended [set out as a note above], that consideration be given to quarters or subsistence, commissary or other purchasing privileges, in determining cost of living allowance rates, is suspended except to the extent that such privileges are furnished as a result of Federal civilian employment.

1-102. Quarters or subsistence, commissary or other purchasing privileges, shall not be taken into consideration in determining cost of living allowance rates of employees who are furnished such facilities as a result of Federal civilian employment but who do not use them.

1-2. ADMINISTRATIVE MATTERS

1-201. This Order shall take effect July 30, 1978 and shall operate prospectively.

1-202. The Office of Personnel Management shall conduct a study of problems associated with the implementation of Section 5941 of Title 5 of the United States Code. The Office's findings and recommendations for long-term solutions to problems encountered with respect to the cost of living allowance and differential compensation authorized by that statute shall be submitted to the President.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5402 of this title; title 20 section 906; title 22 section 2506; title 31 section 1225; title 39 section 1005.

§ 5943. Foreign currency appreciation allowances

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 128 of title 26.

§ 5948. Physicians comparability allowances

(a) Notwithstanding any other provision of law, and in order to recruit and retain highly qualified Government physicians, the head of an agency, subject to the provisions of this section and such regulations as the President or his designee may prescribe, may enter into a service agreement with a Government physician which provides for such physician to complete a specified period of service in such agency in return for an allowance for the duration of such agreement in an amount to be determined by the agency head and specified in the agreement, but not to exceed—

(1) $7,000 per annum if, at the time the agreement is entered into, the Government physician has served as a Government physician for twenty-four months or less, or

(2) $10,000 per annum if the Government physician has served as a Government physician for more than twenty-four months.

(b) An allowance may not be paid pursuant to this section to any physician who—

(1) is employed on less than a half-time or intermittent basis,

(2) occupies an internship or residency training position,

(3) is a reemployed annuitant, or

(4) is fulfilling a scholarship obligation.

(c) The head of an agency, pursuant to such regulations, criteria, and conditions as the President or his designee may prescribe, shall determine categories of positions applicable to physicians in such agency with respect to which there is a significant recruitment and retention problem. Only physicians serving in such positions shall be eligible for an allowance pursuant to this section. The amounts of each such allowance shall be determined by the agency head, subject to such regulations, criteria, and conditions as the President or his designee may prescribe, and shall be the minimum amount necessary to deal with the recruitment and retention problem for each such category of physicians.

(d) Any agreement entered into by a physician under this section shall be for a period of one year of service in the agency involved unless the physician requests an agreement for a longer period of service. No agreement shall be entered into under this section later than September 30, 1979, nor shall any agreement cover a period of service extending beyond September 30, 1981.

(e) Unless otherwise provided for in the agreement under subsection (f) of this section, an agreement under this section shall provide that the physician, in the event that such physician voluntarily, or because of misconduct, fails to complete at least one year of service pursuant to such agreement, shall be required to refund the total amount received under this section, unless the head of the agency, pursuant to such regulations as may be prescribed under this section by the President or his designee, determines that such failure is necessitated by circumstances beyond the control of the physician.

(f) Any agreement under this section shall specify, subject to such regulations as the President or his designee may prescribe, the terms under which the head of the agency and the physician may elect to terminate such agreement, and the amounts, if any, required to be refunded by the physician for each reason for termination.

(g) For the purpose of this section—

(1) "Government physician" means any individual employed as a physician who is paid under—

(A) section 5332 of this title, relating to the General Schedule;

(B) section 5361 of this title, or similar statutory authority, relating to administratively determined pay for certain specially qualified scientific or professional personnel;

(C) section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b), relating to the Tennessee Valley Authority;

(D) title 4 of the Foreign Service Act of 1946 (22 U.S.C. 861–890), relating to the Foreign Service;

(E) section 10 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), relating to the Central Intelligence Agency;

(F) section 121 of title 2 of the Canal Zone Code, relating to the Canal Zone Government and the Panama Canal Company; or

(G) section 2 of the Act of May 29, 1959 (Public Law 86-36, as amended, 50 U.S.C. 402 note), relating to the National Security Agency; and

(2) "agency" means an Executive agency, as defined in section 105 of this title, and the District of Columbia government.

(h)(1) Any allowance paid under this section shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of chapter 55, chapter 81, 83, or 87 of this title, or other benefits related to basic pay.

(2) Any allowance under this section for a Government physician shall be paid in the same manner and at the same time as the physician's basic pay is paid.

(i) Any regulations, criteria, or conditions that may be prescribed under this section by the President or his designee shall not be appli-

cable to the Tennessee Valley Authority, and the Tennessee Valley Authority shall have sole responsibility for administering the provisions of this section with respect to Government physicians employed by the Authority.

(Added Pub. L. 95-603, § 2(a), Nov. 6, 1978, 92 Stat. 3018.)

REFERENCES IN TEXT

Section 5361 of this title, referred to in subsec. (g)(1)(B), was redesignated section 5371 by Pub. L. 95-454, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

EFFECTIVE DATE OF REPEAL WITHOUT CONGRESSIONAL EXTENSION

Section 3 of Pub. L. 95-603 provided that: "The amendments made by this Act [enacting this section and provisions set out as notes under this section] are repealed, unless specifically extended by Act of Congress, effective on September 30, 1981."

SHORT TITLE

Section 1 of Pub. L. 95-603 provided: "That this Act [which enacted this section and provisions set out as notes under this section] may be cited as the 'Federal Physicians Comparability Allowance Act of 1978'."

TIME OF ENTRY INTO ALLOWANCE AGREEMENTS AND FOR COMMENCEMENT OF ALLOWANCE

Section 2(c) of Pub. L. 95-603 provided that:

"No agreement shall be entered into under section 5948 of title 5, United States Code, as added by subsection (a), before the 60th day after the date of the enactment of this Act [Nov. 6, 1978]. No such agreement shall provide for the payment of any allowance under such section for any pay period beginning before the later of—

"(1) such 60th day, or

"(2) October 1, 1978."

EX. ORD. NO. 12109. DELEGATION OF AUTHORITY TO DIRECTOR OF OFFICE OF PERSONNEL MANAGEMENT

Ex. Ord. No. 12109, Dec. 28, 1978, 44 F.R. 1067, provided:

By the authority vested in me as President of the United States of America by Section 5948 of Title 5 and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1-101. The Director of the Office of Personnel Management is hereby designated and empowered to exercise, in consultation with the Director of the Office of Management and Budget, the authority of the President under Section 5948 of Title 5 of the United States Code, to prescribe regulations, criteria, and conditions with regard to the payment of comparability allowances to recruit and retain certain Federal physicians.

1-102. Until the Office of Personnel Management is established (on or before January 1, 1979), pursuant to Reorganization Plan No. 2 of 1978 (43 FR 36037) [set out under section 1101 of this title], the Civil Service Commission shall exercise the authority delegated under this Order to the Director of the Office of Personnel Management.

JIMMY CARTER.

Subpart E—Attendance and Leave

CHAPTER 61—HOURS OF WORK

§ 6101. Basic 40-hour workweek; work schedules; regulations

[See main edition for text of (a) and (b)]

(c) The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this section insofar as this section affects employees in or under an Executive agency.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

FEDERAL EMPLOYEES FLEXIBLE AND COMPRESSED WORK SCHEDULES

Pub. L. 95-390, §§ 1-306, Sept. 29, 1978, 92 Stat. 755 to 762, provided that:

"SHORT TITLE

"SECTION 1. This Act [enacting section 5550a of this title and this note] may be cited as the 'Federal Employees Flexible and Compressed Work Schedules Act of 1978'."

"CONGRESSIONAL FINDINGS

"SEC. 2. The Congress finds that new trends in the usage of 4-day workweeks, flexible work hours, and other variations in workday and workweek schedules in the private sector appear to show sufficient promise to warrant carefully designed, controlled, and evaluated experimentation by Federal agencies over a 3-year period to determine whether and in what situations such varied work schedules can be successfully used by Federal agencies on a permanent basis. The Congress also finds that there should be sufficient flexibility in the work schedules of Federal employees to allow such employees to meet the obligations of their faith.

"DEFINITIONS

"SEC. 3. For purposes of this Act (other than title IV) [this note]—

"(1) the term 'agency' means an Executive agency and a military department (as such terms are defined in sections 105 and 102, respectively, of title 5, United States Code);

"(2) the term 'employ' has the meaning given it by section 2105 of title 5, United States Code;

"(3) the term 'Commission' means the United States Civil Service Commission; and

"(4) the term 'basic work requirement' means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise.

"EXPERIMENTAL PROGRAMS

"SEC. 4. (a)(1) Within 180 days after the effective date of this section, and subject to the requirements of section 302 and the terms of any written agreement referred to in section 302(a), the Commission shall establish a program which provides for the conducting of experiments by the Commission under titles I and II of this Act. Such experimental program shall cover a sufficient number of positions throughout the executive branch, and a sufficient range of worktime alternatives, as to provide an adequate basis on which to evaluate the effectiveness and desirability of permanently maintaining flexible or compressed work schedules within the executive branch.

"(2) Each agency may conduct one or more experiments under titles I and II of this Act. Such experiments shall be subject to such regulations as the Commission may prescribe under section 305 of this Act.

"(b) The Commission shall, not later than 90 days after the effective date of this section, establish a

master plan which shall contain guidelines and criteria by which the Commission will study and evaluate experiments conducted under titles I and II of this Act. Such master plan shall provide for the study and evaluation of experiments within a sample of organizations of different size, geographic location, and functions and activities, sufficient to insure adequate evaluation of the impact of varied work schedules on—

"(1) the efficiency of Government operations;

"(2) mass transit facilities and traffic;

"(3) levels of energy consumption;

"(4) service to the public;

"(5) increased opportunities for full-time and part-time employment; and

"(6) individuals and families generally.

"(c) The Commission shall provide educational material, and technical aids and assistance, for use by an agency before and during the period such agency is conducting experiments under this Act [enacting section 5550a of this title and this note].

"(d) If the head of an agency determines that the implementation of an experimental program referred to in subsection (a) would substantially disrupt the agency in carrying out its functions, such agency head shall request the Commission to exempt such agency from the requirements of any experiment conducted by the Commission under subsection (a). Such request shall be accompanied by a report detailing the reasons for such determination. The Commission shall exempt an agency from such requirements only if it finds that including the agency within the experiment would not be in the best interest of the public, the Government, or the employees. The filing of such a request with the Commission shall exclude the agency from the experiment until the Commission has made its determination or until 180 days after the date the request is filed, whichever first occurs.

"TITLE I—FLEXIBLE SCHEDULING OF WORK HOURS

"DEFINITIONS

"SEC. 101. For purposes of this title—

"(1) the term 'credit hours' means any hours, within a flexible schedule established under this title, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday; and

"(2) the term 'overtime hours' means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours.

"FLEXIBLE SCHEDULING EXPERIMENTS

"SEC. 102. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agenices [agencies] to test flexible schedules which include—

"(1) designated hours and days during which an employee on such a schedule must be present for work; and

"(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

"(b) Notwithstanding any other provision of this Act [enacting section 5550a of this title and this note], but subject to the terms of any written agreement under section 302(a)—

"(1) any experiment under subsection (a) of this section may be terminated by the Commission if it determines that the experiment is not in the best interest of the public, the Government, or the employees; or

"(2) if the head of an agency determines that any organization within the agency which is participating in an experiment under subsection (a) is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

"(A) restrict the employees' choice of arrival and departure time,

"(B) restrict the use of credit hours, or

"(C) exclude from such experiment any employee or group of employees.

"(c) Experiments under subsection (a) shall terminate not later than the end of the 3-year period which begins on the effective date of this title.

"COMPUTATION OF PREMIUM PAY

"SEC. 103. (a) For purposes of determining compensation for overtime hours in the case of an employee participating in an experiment under section 102—

"(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1), 5544(a), and 5550 of title 5, United States Code, section 4107(e)(5) of title 38, United States Code section 7 of the Fair Labor Standards Act, as amended [section 207 of Title 29, Labor], or any other provision of law; or

"(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

"(b) Notwithstanding the provisions of law referred to in paragraph (1) of subsection (a), an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 106 or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

"(c)(1) Notwithstanding section 5545(a) of title 5, United States Code, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day from which such premium pay is otherwise authorized; except that—

"(A) if an employee is on a flexible schedule under which—

"(i) the number of hours during which such employee must be present for work, plus

"(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,

which occur outside of the night work hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

"(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

"(2) Notwithstanding section 5343(f) of title 5, United States Code, and 4107(e)(2) of title 38, United States Code, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized; except that such differential shall be paid to an employee on a flexible schedule under this title—

"(A) in the case of an employee subject to such section 5343(f), for which all or a majority of the hours of such schedule for any day fall between the hours specified in such section, or

"(B) in the case of an employee subject to such section 4107(e)(2), for which 4 hours of such schedule fall between the hours specified in such section.

"HOLIDAYS

"SEC. 104. Notwithstanding sections 6103 and 6104 of title 5, United States Code, if any employee on a flexible schedule under this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Commission).

"TIME-RECORDING DEVICES

"SEC. 105. Notwithstanding section 6106 of title 5, United States Code, the Commission or an agency may use recording clocks as part of its experiments under this title.

"CREDIT HOURS; ACCUMULATION AND COMPENSATION

"SEC. 106. (a) Subject to any limitation prescribed by the Commission or the agency, a full-time employee on a flexible schedule can accumulate not more than 10 credit hours, and a part-time employee can accumulate not more than one-eighth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

"(b) Any employee who is on a flexible schedule experiment under this title and who is no longer subject to such an experiment shall be paid at such employee's then current rate of basic pay for—

"(1) in the case of a full-time employee, not more than 10 credit hours accumulated by such employee, or

"(2) in the case of a part-time employee, the number of credit hours (not in excess of one-eighth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

"TITLE II—4-DAY WEEK AND OTHER COMPRESSED WORK SCHEDULES

"DEFINITIONS

"SEC. 201. For purposes of this title—

"(1) the term 'compressed schedule' means—

"(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

"(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays; and

"(2) the term 'overtime hours' means any hours in excess of those specified hours which constitute the compressed schedule.

"COMPRESSED SCHEDULE EXPERIMENTS

"SEC. 202. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test a 4-day work-week or other compressed schedule.

"(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any experiment under subsection (a) unless a majority of the employees in such unit who, but for this paragraph, would be included in such experiment have voted to be so included.

"(2) Upon written request to any agency by an employee, the agency, if it determines that participation in an experiment under subsection (a) would impose a personal hardship on such employee, shall—

"(A) except such employee from such experiment; or

"(B) reassign such employee to the first position within the agency—

"(i) which becomes vacant after such determination,

"(ii) which is not included within such experiment,

"(iii) for which such employee is qualified, and

"(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

"(c) Notwithstanding any other provision of this Act [enacting section 5550a of this title and this note], but subject to the terms of any written agreement under section 302(a), any experiment under subsection (a) may be terminated by the Commission, or the agency, if it determines that the experiment is not in the best interest of the public, the Government, or the employees.

"(d) Experiments under subsection (a) shall terminate not later than the end of the 3-year period which begins on the effective date of this title.

"COMPUTATION OF PREMIUM PAY

"SEC. 203. (a) The provisions of sections 5542(a), 5544(a), and 5550(2) of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended [section 207 of title 29 Labor], or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

"(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by whichever statutory provisions referred to in subsection (a) are applicable to the employee. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

"(c) Notwithstanding section 5544(a), 5546(a), or 5550(1) of title 5, United States Code, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

"(d) Notwithstanding section 5546(b) of title 5, United States Code, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of title 5, United States Code, as applicable, or the provisions of section 7 of the Fair Labor Standards Act, as amended [section 207 of Title 29 Labor], whichever provisions are more beneficial to the employee.

"TITLE III—ADMINISTRATIVE PROVISIONS

"ADMINISTRATION OF LEAVE AND RETIREMENT PROVISIONS

"SEC. 301. For purposes of administering sections 6303(a), 6304, 6307 (a) and (c), 6323, 6326, and 8339(m) of title 5, United States Code, in the case of an employee who is in any experiment under title I or II, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be con-

sidered to be references to 8 hours (or to the respective multiples or parts thereof).

"APPLICATION OF EXPERIMENTS IN THE CASE OF NEGOTIATED CONTRACTS

"SEC. 302. (a) Employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included within any experiment under title I or II of this Act except to the extent expressly provided under a written agreement between the agency and such organization.

"(b) The Commission or an agency may not participate in a flexible or compressed schedule experiment under a negotiated contract which contains premium pay provisions which are inconsistent with the provisions of section 103 or 203 of this Act, as applicable.

"PROHIBITION OF COERCION

"SEC. 303. (a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

"(1) such employee's rights under title I to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

"(2) such employee's right under section 202(b)(1) to vote whether or not to be included within a compressed schedule experiment or such employee's right to request an agency determination under section 202(b)(2).

For the purpose of the preceding sentence, the term 'intimidate, threaten, or coerce' includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"(b) Any employee who violates the provisions of subsection (a) shall, upon a final order of the Commission, be—

"(1) removed from such employee's position, in which event that employee may not thereafter hold any position as an employee for such period as the Commission may prescribe;

"(2) suspended without pay from such employee's position for such period as the Commission may prescribe; or

"(3) disciplined in such other manner as the Commission shall deem appropriate.

The commission shall prescribe procedures to carry out this subsection under which an employee subject to removal, suspension, or other disciplinary action shall have rights comparable to the rights afforded an employee subject to removal or suspension under subchapter III of chapter 73 of title 5, United States Code, relating to certain prohibited political activities.

"REPORTS

"SEC. 304. Not later than 2½ years after the effective date of titles I and II of this Act, the Commission shall—

"(1) prepare an interim report containing recommendations as to what, if any, legislative or administrative action shall be taken based upon the results of experiments conducted under this Act [enacting section 5550a of this title and this note], and

"(2) submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate.

The Commission shall prepare a final report with regard to experiments conducted under this Act [enacting section 5550a of this title and this note] and shall submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate not later than 3 years after such effective date.

"REGULATIONS

"SEC. 305. The Commission shall prescribe regulations necessary for the administration of the foregoing provisions of this Act [enacting section 5550a of this title and this note].

"EFFECTIVE DATE

"SEC. 306. The provisions of section 4 and titles I and II of this Act shall take effect on the 180th day after—

"(1) the date of the enactment of this Act [Sept. 29, 1978], or

"(2) October 1, 1978,

whichever date is later."

§ 6103. Holidays

(a) The following are legal public holidays:

New Year's Day, January 1.

Washington's Birthday, the third Monday in February.

Memorial Day, the last Monday in May.

Independence Day, July 4.

Labor Day, the first Monday in September.

Columbus Day, the second Monday in October.

Veterans Day, November 11.

Thanksgiving Day, the fourth Thursday in November.

Christmas Day, December 25.

[*See main edition for text of* (b), (c)]

(As amended Pub. L. 94-97, Sept. 18, 1975, 89 Stat. 479.)

REFERENCES IN TEXT

Section 6309 of this title, referred to in subsec. (b)(1)(B), was repealed by Pub. L. 94-183, § 2(26), Dec. 31, 1975, 89 Stat. 1058.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-97 changed Veterans Day from the fourth Monday in October to November 11.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-97 provided that the amendment of subsec. (a) is effective Jan. 1, 1978.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6104 of this title; title 21 section 1053; title 29 section 1201; title 38 section 3020; title 42 section 909.

§ 6104. Holidays; daily, hourly, and piece-work basis employees

EX. ORD. NO. 10552. DELEGATION OF AUTHORITY TO PROMULGATE REGULATIONS

Ex. Ord. No. 10552, Aug. 10, 1954, 19 F.R. 5079, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, 65 Stat. 713, it is declared that the Office of Personnel Management be, and it is hereby, designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority vested in the President by the joint resolution of June 29, 1938, 52 Stat. 1246, as amended by the act of June 11, 1954, 68 Stat. 249 [this section], to promulgate regulations under which certain employees of the Government may be prevented or relieved from working by administrative order.

DWIGHT D. EISENHOWER.

CHAPTER 63—LEAVE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 4703 of this title; title 20 section 241; title 25 section 2011.

SUBCHAPTER I—ANNUAL AND SICK LEAVE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5508, 5551, 8339 of this title; title 7 section 1766c; title 22 section 1151; title 46 section 1126.

§ 6301. Definitions

For the purpose of this subchapter—

[*See main edition for text of (1)*]

(2) "employee" means—

[*See main edition for text of (A) and (B)*]

but does not include—

[*See main edition for text of (i) to (x)*]

(xi) an officer in the executive branch or in the government of the District of Columbia who is designated by the President, except a postmaster, United States attorney, or United States marshal;

(xii) an officer who receives pay under section 866 of title 22; or

(xiii) an officer in the legislative or judicial branch who is appointed by the President.

(As amended Pub. L. 95-519, § 1, Oct. 25, 1978, 92 Stat. 1819.)

AMENDMENTS

1978—Par. (2). Pub. L. 95-519 added cl. (xiii).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-519 effective beginning on the first day of the first applicable pay period beginning on or after Oct. 25, 1978, see section 4(a) of Pub. L. 95-519, set out as an Effective Date of 1978 Amendment note under section 5551 of this title.

EXECUTIVE ORDER NO. 10540

Ex. Ord. No. 10540, June 29, 1954, 19 F.R. 3983, set out as note under this section, which related to the designation of certain officers as exempt from the Annual and Sick Leave Act of 1951, was revoked by section 2-201 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5551, 6302, 6305, 6306, 6308, 8339 of this title; title 22 section 1151.

§ 6302. General provisions

[*See main edition for text of (a) to (d)*]

(e) If an officer excepted from this subchapter by section 6301(2)(x)-(xiii) of this title, without a break in service, again becomes subject to this subchapter on completion of his service as an excepted officer, the unused annual and sick leave standing to his credit when he was excepted from this subchapter is deemed to have remained to his credit.

[*See main edition for text of (f)*]

(As amended Pub. L. 95-519, § 2, Oct. 25, 1978, 92 Stat. 1819.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-519 substituted "6301(2)(x)-(xiii)" for "6301(2)(x)-(xii)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-519 effective beginning on the first day of the first applicable pay period beginning on or after Oct. 25, 1978, see section 4(a) of Pub. L. 95-519, set out as an Effective Date of 1978 Amendment note under section 5551 of this title.

§ 6304. Annual leave; accumulation

(a) Except as provided by subsections (b), (d), (e), and (f) of this section, annual leave provided by section 6303 of this title, which is not used by an employee, accumulates for use in succeeding years until it totals not more than 30 days at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year.

[*See main edition for text of (b) and (c)*]

(d) [*See main edition for text of (1)*]

(2) Annual leave restored under paragraph (1) of this subsection, or under clause (2) of section 5562(a) of this title, which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management. Leave credited under this paragraph but unused and still available to the employee under the regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

[*See main edition for text of (e)*]

(f) Annual leave accrued by an individual while serving in a position in the Senior Executive Service shall not be subject to the limitation on accumulation otherwise imposed by this section.

(As amended Pub. L. 95-454, title IV, § 410, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1173, 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 410(1) inserted reference to subsec. (f).

Subsec. (d)(2). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsec. (f). Pub. L. 95-454, § 410(2), added subsec. (f).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 906(a)(2) and (3) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Amendment by section 410 of Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of

Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

§ 6305. Home leave; leave for Chiefs of Missions; leave for crews of vessels

[See main edition for text of (a) and (b)]

(c) An officer, crewmember, or other employee serving aboard an oceangoing vessel on an extended voyage may be granted leave of absence, under regulations of the Office of Personnel Management, at a rate not to exceed 2 days for each 30 calendar days of that service without regard to other leave provided by this subchapter. Leave so granted—

(1) accumulates for future use without regard to the limitation in section 6304(b) of this title;

(2) may not be made the basis for a lump-sum payment; and

(3) may not be made the basis for terminal leave except under such special or emergency circumstances as may be prescribed under the regulations of the Office.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

CODIFICATION

Pub. L. 95-454, § 906(a)(3), purported to substitute "Office" for "Commission" in section 6405 of this title. In view of the nonexistence of a section 6405 of this title, the amendment was executed to this section as the probable intent of Congress.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission". See Codification note above.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 6306. Annual leave; refund of lump-sum payment; recredit of annual leave

[See main edition for text of (a)]

(b) An amount refunded under subsection (a) of this section shall be deposited in the Treasury of the United States to the credit of the employing agency. When an individual is reemployed under the same leave system, an amount of leave equal to the leave represented by the refund shall be recredited to him in the employing agency. When an individual is reemployed under a different leave system, an amount of leave equal to the leave represented by the refund shall be recredited to him in the employing agency on an adjusted basis under regulations prescribed by the Office of Personnel Management. When an individual is reemployed in a position excepted from this subchapter by section 6301(2)(x)-(xiii) of this title, an amount of leave equal to the leave represented by the refund is deemed, on separation from the service, death, or transfer to another position in the service, to have remained to his credit.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-519, § 2, Oct. 25, 1978, 92 Stat. 1819.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-519 substituted "6301(2)(x)-(xiii)" for "6301(2)(x)-(xii)".

Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-519 effective beginning on the first day of the first applicable pay period beginning on or after Oct. 25, 1978, see section 4(a) of Pub. L. 95-519, set out as an Effective Date of 1978 Amendment note under section 5551 of this title.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 1149; title 25 section 2011.

§ 6308. Transfers between positions under different leave systems.

The annual and sick leave to the credit of an employee who transfers between positions under different leave systems without a break in service shall be transferred to his credit in the employing agency on an adjusted basis under regulations prescribed by the Office of Personnel Management, unless the individual is excepted from this subchapter by section 6301(2)(ii), (iii), (vi), or (vii) of this title. However, when a former member receiving a retirement annuity under sections 521-535 of title 4, District of Columbia Code, is reemployed in a position to which this subchapter applies, his sick leave balance may not be recredited to his account on the later reemployment.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6312 of this title; title 46 section 1126.

§ 6310. Leave of absences; aliens

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6301, 6302 of this title; title 22 section 889.

§ 6311. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SUBCHAPTER II—OTHER PAID LEAVE

§ 6322. Leave for jury or witness service; official duty status for certain witness service

[*See main edition for text of (a) and (b)*]

(c) The Office of Personnel Management may prescribe regulations for the administration of this section.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 6326. Absence in connection with funerals of immediate relatives in the Armed Forces

[*See main edition for text of (a)*]

(b) The Office of Personnel Management is authorized to issue regulations for the administration of this section.

[*See main edition for text of (c)*]

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Subpart F—Labor-Management and Employee Relations

CHAPTER 71—LABOR-MANAGEMENT RELATIONS

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AMENDMENTS

1978—Pub. L. 95-454, title VII, §§ 701, 703(a)(2), Oct. 13, 1978, 92 Stat. 1191, 1217, in heading for Subpart F added "Labor-Management and" preceding "Employee", in heading for chapter 71 substituted "Labor-Management Relations" for "Policies", in heading for subchapter I substituted "General Provisions" for "Employee Organizations", in item 7101 substituted "Findings and purpose" for "Right to organize; postal employees", in item 7102 substituted "Employees' rights" for "Right to petition Congress; employees", added items 7103 to 7106, and added subchapter II and items 7111 to 7120, subchapter III and items 7121 to 7123, and subchapter IV and items 7131 to 7135. Former subchapter II heading "Antidiscrimination in Employment" and items 7151 to 7154, "Policy", "Marital status", "Physical handicap", and "Other prohibitions" respectively, were transferred to subchapter I of chapter 72 and renumbered and amended.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 4703, 5366, 5596 of this title.

SUBCHAPTER I—GENERAL PROVISIONS

§ 7101. Findings and purpose

(a) The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to

[1] So in original. Does not conform to subchapter heading.

facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1192.)

PRIOR PROVISIONS

A prior section 7101, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523; Pub. L. 91–375, § 6(c)(19), Aug. 12, 1970, 84 Stat. 776, which related to right of postal employees to organize, was omitted in the general amendment of this chapter.

EFFECTIVE DATE

Chapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

EMPLOYEE-MANAGEMENT RELATIONS IN THE FOREIGN SERVICE

For provisions governing employee-management relations in the Foreign Service, see Ex. Ord. No. 11636, Dec. 17, 1971, 36 F.R. 24901, set out as a note under section 801 of Title 22, Foreign Relations and Intercourse.

EXECUTIVE ORDER No. 10988

Ex. Ord. No. 10988, Jan. 18, 1962, 27 F.R. 551, which related to employee-management cooperation in the Federal service, was revoked by Ex. Ord. No. 11491, Oct. 29, 1969, 34 F.R. 17605, set out as a note below.

EX. ORD. No. 11491. LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

Ex. Ord. No. 11491, Oct. 29, 1969, 34 F.R. 17605, as amended by Ex. Ord. No. 11616, Aug. 26, 1971, 36 F.R. 17319; Ex. Ord. No. 11636, Dec. 17, 1971, 36 F.R. 24901; Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743; Ex. Ord. No. 11901, Jan. 30, 1976, 41 F.R. 4807; Ex. Ord. No. 12027, Dec. 5, 1977, 42 F.R. 61851; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

WHEREAS the public interest requires high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency; and

WHEREAS the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment; and

WHEREAS the participation of employees should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials; and

WHEREAS subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of labor organizations and agency management:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 3301 and 7301 of title 5 of the United States Code and as President of the United States, I hereby direct that the following policies shall govern officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing such employees.

GENERAL PROVISIONS

SECTION 1. *Policy.* (a) Each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this Order, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights under this section and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in a labor organization.

(b) Paragraph (a) of this section does not authorize participation in the management of a labor organization or acting as a representative of such an organization by a supervisor, except as provided in section 24 of this Order, or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

SEC. 2. *Definitions.* When used in this Order, the term—

(a) "Agency" means an executive department, a Government corporation, and an independent establishment as defined in section 104 of title 5, United States Code, except the General Accounting Office;

(b) "Employee" means an employee of an agency and an employee of a nonappropriated fund instrumentality of the United States but does not include, for the purpose of exclusive recognition or national consultation rights, a supervisor, except as provided in section 24 of this Order;

(c) "Supervisor" means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(d) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(e) "Labor organization" means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which—

(1) consists of management officials or supervisors, except as provided in section 24 of this Order;

(2) assists or participates in a strike against the Government of the United States or any agency thereof, or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(3) advocates the overthrow of the constitutional form of government in the United States; or

(4) discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin;

(f) "Agency management" means the agency head and all management officials, supervisors, and other representatives of management having authority to

act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this Order;

(g) "Authority" means the Federal Labor Relations Authority;

(h) "Panel" means the Federal Service Impasses Panel;

(i) "Assistant Secretary" means the Assistant Secretary of Labor for Labor Management Relations; and

(j) "General Counsel" means the General Counsel of the Authority.

SEC. 3. *Application.* (a) This Order applies to all employees and agencies in the executive branch, except as provided in paragraphs (b), (c) and (d) of this section.

(b) This Order (except section 22) does not apply to—

(1) the Federal Bureau of Investigation;

(2) the Central Intelligence Agency;

(3) any other agency, or office, bureau, or entity within an agency, which has as a primary function intelligence, investigative, or security work, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with national security requirements and considerations; or

(4) any office, bureau or entity, within an agency which has as a primary function investigation or audit of the conduct or work of officials or employees of the agency for the purpose of ensuring honesty and integrity in the discharge of their official duties, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with the internal security of the agency.

(5) The Foreign Service of the United States: Department of State, United States Information Agency and Agency for International Development and its successor agency or agencies.

(6) The Tennessee Valley Authority; or

(7) Personnel of the Federal Labor Relations Authority (including the Office of the General Counsel and the Federal Service Impasses Panel).

(c) The head of an agency may, in his sole judgment, suspend any provision of this Order (except section 22) with respect to any agency installation or activity located outside the United States, when he determines that this is necessary in the national interest, subject to the conditions he prescribes.

(d) Employees engaged in administering a labor-management relations law or this Order who are otherwise authorized by this Order to be represented by a labor organization shall not be represented by a labor organization which also represents other groups of employees under the law or this Order, or which is affiliated directly or indirectly with an organization which represents such a group of employees.

ADMINISTRATION

SEC. 4. *Powers and Duties of the Federal Labor Relations Authority.*

(a) [Revoked].

(b) The Authority shall administer and interpret this Order, decide major policy issues, and prescribe regulations.

(c) The Authority shall, subject to its regulations:

(1) decide questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for its considerations;

(2) supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certify the results;

(3) decide questions as to the eligibility of labor organizations for national consultation rights;

(4) decide unfair labor practice complaints; and

(5) decide questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement as provided in Section 13(d) of this Order.

(d) The Authority may consider, subject to its regulations:

(1) appeals on negotiability issues as provided in Section 11(c) of this Order;

(2) exceptions to arbitration awards;

(3) appeals from decisions of the Assistant Secretary of Labor for Labor-Management Relations issued pursuant to Section 6(b) this Order; and

(4) other matters it deems appropriate to assure the effectuation of the purposes of this Order.

(e) In any matters arising under subsection (c) and (d)(3) of this Section, the Authority may require an agency or a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as the Authority considers appropriate to effectuate the policies of this Order.

(f) In performing the duties imposed on it by this Section, the Authority may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686).

SEC. 5. *Powers and Duties of the Federal Service Impasses Panel.* (a) There is hereby established the Federal Service Impasses Panel as a distinct organizational entity within the Authority. The Panel consists of at least three members appointed by the President, one of whom he designates as chairman. The Authority shall provide the services and staff assistance needed by the Panel.

(b) The Panel may consider negotiation impasses as provided in section 17 of this Order and may take any action it considers necessary to settle an impasse.

(c) The Panel shall prescribe regulations needed to administer its function under this Order.

SEC. 6. *Powers and Duties of the Office of the General Counsel and the Assistant Secretary of Labor for Labor-Management Relations.*

(a) The General Counsel is authorized, upon direction by the Authority, to:

(1) investigate complaints of violations of Section 19 of this Order;

(2) make final decisions as to whether to issue unfair labor practice complaints and prosecute such complaints before the Authority;

(3) direct and supervise all employees in the Office of General Counsel, including employees of the General Counsel in the regional office of the Authority;

(4) perform such other duties as the Authority may prescribe; and

(5) prescribe regulations needed to administer his functions under this Order.

(b) The Assistant Secretary shall:

(1) decide alleged violations of the standards of conduct for labor organizations, established in Section 18 of this Order; and

(2) prescribe regulations needed to administer his functions under this Order.

(c) In any matter arising under paragraph (b) of this Section, the Assistant Secretary may require a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order.

(d) In performing the duties imposed on them by this Section, the General Counsel and the Assistant Secretary may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686).

RECOGNITION

SEC. 7. *Recognition in general.* (a) An agency shall accord exclusive recognition or national consultation rights at the request of a labor organization which meets the requirements for the recognition or consultation rights under this Order.

(b) A labor organization seeking recognition shall submit to the agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

(c) When recognition of a labor organization has been accorded, the recognition continues as long as

the organization continues to meet the requirements of this Order applicable to that recognition, except that this section does not require an election to determine whether an organization should become, or continue to be recognized as, exclusive representative of the employees in any unit or subdivision thereof within 12 months after a prior valid election with respect to such unit.

(d) Recognition of a labor organization does not—

(1) preclude an employee, regardless of whether he is in a unit of exclusive recognition, from exercising grievance or appelate rights established by law or regulation, or from choosing his own representative in a grievance or appelate action, except when the grievance is covered under a negotiated procedure as provided in section 13;

(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members. Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy covering employees in that unit or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

(e) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(f) Informal recognition or formal recognition shall not be accorded.

SEC. 8. [Revoked by Ex. Ord. No. 11616, Aug. 26, 1971, 36 F.R. 17319.]

SEC. 9. *National consultation rights.* (a) An agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the Federal Labor Relations Authority as the representative of a substantial number of employees of the agency. National consultation rights shall not be accorded for any unit where a labor organization already holds exclusive recognition at the national level for that unit. The granting of national consultation rights does not preclude an agency from appropriate dealings at the national level with other organizations on matters affecting their members. An agency shall terminate national consultation rights when the labor organization ceases to qualify under the established criteria.

(b) When a labor organization has been accorded national consultation rights, the agency, through appropriate officials, shall notify representatives of the organization of proposed substantive changes in personnel policies that affect employees it represents and provide an opportunity for the organization to comment on the proposed changes. The labor organization may suggest changes in the agency's personnel policies and have its views carefully considered. It may consult in person at reasonable times, on request, with appropriate officials on personnel policy matters, and at all times present its views thereon in writing. An agency is not required to consult with a labor organization on any matter on which it would not be required to meet and confer if the organization were entitled to exclusive recognition.

(c) Questions as to the eligibility of labor organizations for national consultation rights may be referred to the Authority for decision.

SEC. 10. *Exclusive recognition.* (a) An agency shall accord exclusive recognition to a labor organization when the organization has been selected, in a secret ballot election, by a majority of the employees in an appropriate unit as their representative; provided that this section shall not preclude an agency from according exclusive recognition to a labor organization, without an election, where the appropriate unit is established through the consolidation of existing exclusively recognized units represented by that organization.

(b) A unit may be established on a plant or installation, craft, functional, or other basis which will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes—

(1) any management official or supervisor, except as provided in section 24;

(2) an employee engaged in Federal personnel work in other than a purely clerical capacity; or

(3) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(4) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. Questions as to the appropriate unit and related issues may be referred to the Authority for decision.

(c) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(d) All elections shall be conducted under the supervision of the Authority, or persons designated by it, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity to choose the labor organization he wishes to represent him, from among those on the ballot, or "no union", except as provided in subparagraph (4) of this paragraph. Elections may be held to determine whether—

(1) a labor organization should be recognized as the exclusive representative of employees in a unit;

(2) a labor organization should replace another labor organization as the exclusive representative;

(3) a labor organization should cease to be the exclusive representative; or

(4) a labor organization should be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to be recognized in the existing separate units.

(e) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership. The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

AGREEMENTS

SEC. 11. *Negotiation of agreements.* (a) An agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual; published agency policies and regulations for which a compelling need exists under criteria established by the Federal Labor Relations Authority and which are issued at the agency headquarters level or at the level of a primary national subdivision; a national or other controlling agreement at a higher level in the agency; and this order. They may negotiate an agreement, or any question arising thereunder; determine appropriate techniques, consistent with section 17 of this order, to assist in such negotiation; and execute a written agreement or memorandum of understanding.

(b) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall have due regard for the obligation imposed by paragraph (a) of this section. However, the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

(c) If, in connection with negotiations, an issue develops as to whether a proposal is contrary to law, regulation, controlling agreement, or this order and therefore not negotiable, it shall be resolved as follows:

(1) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under agency regulations;

(2) An issue other than as described in subparagraph (1) of this paragraph which arises at a local level may be referred by either party to the head of the agency for determination;

(3) An agency head's determination as to the interpretation of the agency's regulations with respect to a proposal is final;

(4) A labor organization may appeal to the Authority for a decision when—

(i) it disagrees with an agency head's determination that a proposal would violate applicable law, regulation of appropriate authority outside the agency, or this order, or

(ii) it believes that an agency's regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or this order, or are not otherwise applicable to bar negotiations under paragraph (a) of this section.

(d) [Revoked by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055.]

Sec. 12. *Basic provisions of agreements.* Each agreement between an agency and a labor organization is subject to the following requirements—

(a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;

(b) management officials of the agency retain the right, in accordance with applicable laws and regulations—

(1) to direct employees of the agency;

(2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

(3) to relieve employees from duties because of lack of work or for other legitimate reasons;

(4) to maintain the efficiency of the Government operations entrusted to them;

(5) to determine the methods, means, and personnel by which such operations are to be conducted; and

(6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency; and

(c) nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary written authorization by a member for the payment of dues through payroll deductions. The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

Sec. 13. *Grievance and arbitration procedures.* (a) An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances. The coverage and scope of the procedure shall be negotiated by the parties to the agreement with the exception that it may not cover matters for which a statutory appeal procedure exists and so long as it does not otherwise conflict with statute or this order. It shall be the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage. However, any employee or group of employees in the unit may present such grievances to the agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given opportunity to be present at the adjustment.

(b) A negotiated procedure may provide for arbitration of grievances. Arbitration may be invoked only by the agency or the exclusive representative. Either party may file exceptions to an arbitrator's award with the Authority, under regulations prescribed by the Authority.

(c) [Revoked.]

(d) Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter for which a statutory appeal procedure exists, shall be referred to the Authority for decision. Other questions as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may by agreement of the parties be submitted to arbitration or may be referred to the Authority for decision.

(e) [Revoked.]

Sec. 14. [Revoked by Ex. Ord. No. 11616, Aug. 26, 1971, 36 F.R. 17319.]

Sec. 15. *Approval of agreements.* An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or an official designated by him. An agreement shall be approved within forty-five days from the date of its execution if it conforms to applicable laws, the order, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation) and regulations of other appropriate authorities. An agreement which has not been approved or disapproved within forty-five days from the date of its execution shall go into effect without the required approval of the agency head and shall be binding on the parties subject to the provisions of law, the order and the regulations of appropriate authorities outside the agency. A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement, or, if none, under agency regulations.

Negotiation Disputes and Impasses

Sec. 16. *Negotiation disputes.* The Federal Mediation and Conciliation Service shall provide services and assistance to Federal agencies and labor organizations in the resolution of negotiation disputes. The Service shall determine under what circumstances and in what manner it shall proffer its services.

Sec. 17. *Negotiation impasses.* When voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Federal Service Impasses Panel to consider the matter. The Panel, in its discretion and under the regulations it prescribes, may consider the matter and may recommend procedures to the parties for the resolution of the impasse or may settle the im-

passe by appropriate action. Arbitration or third-party fact finding with recommendations to assist in the resolution of an impasse may be used by the parties only when authorized or directed by the Panel.

CONDUCT OF LABOR ORGANIZATIONS AND MANAGEMENT

SEC. 18. *Standards of conduct for labor organizations.*

(a) An agency shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in paragraph (b) of this section, an organization is not required to prove that it has the required freedom when it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in paragraph (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles when there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from or is subject to other sanction by a parent labor organization or federation of organizations with which it had been affiliated because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by paragraph (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this Order.

(c) A labor organization which has or seeks recognition as a representative of employees under this Order shall file financial and other reports, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe the regulations needed to effectuate this section. These regulations shall conform generally to the principles applied to unions in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary.

SEC. 19. *Unfair labor practices.* (a) Agency management shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order;

(2) encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsor, control, or otherwise assist a labor organization, except that an agency may furnish customary and routine services and facilities under section 23 of this Order when consistent with the best interests of the agency, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

(4) discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under this Order;

(5) refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

(6) refuse to consult, confer, or negotiate with a labor organization as required by this Order.

(b) A labor organization shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order;

(2) attempt to induce agency management to coerce an employee in the exercise of his rights under this Order;

(3) coerce, attempt to coerce, or discipline, fine, or take other economic sanction against a member of the organization as punishment or reprisal for, or for the purpose of hindering or impeding his work performance, his productivity, or the discharge of his duties owed as an officer or employee of the United States;

(4) call or engage in a strike, work stoppage, or slowdown; picket an agency in a labor-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it;

(5) discriminate against an employee with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin; or

(6) refuse to consult, confer, or negotiate with an agency as required by thie Order.

(c) A labor organization which is accorded exclusive recognition shall not deny membership to any employee in the appropriate unit except for failure to meet reasonable occupational standards uniformly required for admission, or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This paragraph does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or by-laws which conform to the requirements of this Order.

(d) Issues which can properly be raised under an appeals procedure may not be raised under this section. Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures. Appeals or grievance decisions shall not be construed as unfair labor practice decisions under this Order nor as precedent for such decisions. All complaints under this section that cannot be resolved by the parties shall be filed with the Authority.

MISCELLANEOUS PROVISIONS

SEC. 20. *Use of official time.* Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted during the non-duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, except to the extent that the negotiating parties agree to other arrangements which may provide that the agency will either authorize official time for up to 40 hours or authorize up to one-half the time spent in negotiations during regular working hours, for a reasonable number of employees, which number normally shall not exceed the number of management representatives.

SEC. 21. *Allotment of dues.* (a) When a labor organization holds formal or exclusive recognition, and the agency and the organization agree in writing to this course of action, an agency may deduct the regular and periodic dues of the organization from the pay of members of the organization in the unit of recognition who make a voluntary allotment for that purpose, and shall recover the costs of making the deductions. Such an allotment is subject to the regulations of the Office of Personnel Management, which shall include provision for the employee to revoke his authorization at stated six-month intervals. Such an allotment terminates when—

(1) the dues withholding agreement between the agency and the labor organization is terminated or ceases to be applicable to the employee; or

(2) the employee has been suspended or expelled from the labor organization.

(b) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

SEC. 22. *Adverse action appeals.* The head of each agency, in accordance with the provisions of this Order and regulations prescribed by the Office of Personnel Management, shall extend to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under sections 7511–7512 of title 5 of the United States Code. Each employee in the competitive service shall have the right to appeal to the Merit Systems Protection Board from an adverse decision of the administrative officer so acting, such appeal to be processed in an identical manner to that provided for appeals under section 7701 of title 5 of the United States Code. Any recommendation by the Merit Systems Protection Board submitted to the head of an agency on the basis of an appeal by an employee in the competitive service shall be complied with by the head of the agency.

SEC. 23. *Agency implementation.* No later than April 1, 1970, each agency shall issue appropriate policies and regulations consistent with this Order for its implementation. This includes but is not limited to a clear statement of the rights of its employees under this Order; procedures with respect to recognition of labor organizations, determination of appropriate units, consultation and negotiation with labor organizations, approval of agreements, mediation, and impasse resolution; policies with respect to the use of agency facilities by labor organizations; and policies and practices regarding consultation with other organizations and associations and individual employees. Insofar as practicable, agencies shall consult with representatives of labor organizations in the formulation of these policies and regulations.

SEC. 24. *Savings clauses.* (a) This Order does not preclude—

(1) the renewal or continuation of a lawful agreement between an agency and a representative of its employees entered into before the effective date of Executive Order No. 10988 (January 17, 1962); or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent the management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the date of this Order.

(b) All grants of informal recognition under Executive Order No. 10988 terminate on July 1, 1970.

(c) All grants of formal recognition under Executive Order No. 10988 terminate under regulations which the Federal Labor Relations Council shall issue before October 1, 1970.

(d) By not later than December 31, 1970, all supervisors shall be excluded from units of formal and exclusive recognition and from coverage by negotiated agreements, except as provided in paragraph (a) of this section.

SEC. 25. *Guidance, training, review and information.* (a) The Office of Personnel Management, in conjunction with the Director of the Office of Management and Budget, shall establish and maintain a program for the policy guidance of agencies on labor-management relations in the Federal service and shall periodically review the implementation of these policies. The Office of Personnel Management shall be responsible for the day-to-day policy guidance under that program. The Office of Personnel Management also shall continuously review the operation of the Federal labor-management relations program to assist in assuring adherence to its provisions and merit system requirements; implement technical advice and information programs for the agencies; assist in the development of programs for training agency personnel and management officials in labor-management relations; and, from time to time, report to the Authority on the state of the program with any recommendations for its improvement.

(b) The Office of Personnel Management shall develop programs for the collection and dissemination of information appropriate to the needs of agencies, organizations and the public.

SEC. 26. *Effective date.* This Order is effective on January 1, 1970, except sections 7(f) and 8 which are effective immediately. Effective January 1, 1970, Executive Order No. 10988 and the President's Memorandum of May 21, 1963, entitled Standards of Conduct for Employee Organzations and Code of Fair Labor Practices, are revoked.

§ 7102. Employees' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1192.)

PRIOR PROVISIONS

A prior section 7102, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, which related to right of employees to petition Congress, was omitted in the general amendment of this chapter. See section 7211 of this title.

§ 7103. Definitions; application

(a) For the purpose of this chapter—

(1) "person" means an individual, labor organization, or agency;

(2) "employee" means an individual—

(A) employed in an agency; or

(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

(i) an alien or noncitizen of the United States who occupies a position outside the United States;

(ii) a member of the uniformed services;

(iii) a supervisor or a management official;

(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development, or the International Communication Agency; or

(v) any person who participates in a strike in violation of section 7311 of this title;

(3) "agency" means an Executive agency (including a nonappropriated fund instrumen-

tality described in section 2105(c) of this title and the Veterans' Canteen Service, Veterans' Administration), the Library of Congress, and the Government Printing Office, but does not include—

(A) the General Accounting Office;

(B) the Federal Bureau of Investigation;

(C) the Central Intelligence Agency;

(D) the National Security Agency;

(E) the Tennessee Valley Authority;

(F) the Federal Labor Relations Authority; or

(G) the Federal Service Impasses Panel;

(4) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by an agency; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(5) "dues" means dues, fees, and assessments;

(6) "Authority" means the Federal Labor Relations Authority described in section 7104(a) of this title;

(7) "Panel" means the Federal Service Impasses Panel described in section 7119(c) of this title;

(8) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

(9) "grievance" means any complaint—

(A) by any employee concerning any matter relating to the employment of the employee;

(B) by any labor organization concerning any matter relating to the employment of any employee; or

(C) by any employee labor organization, or agency concerning—

(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

(10) "supervisor" means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consitent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority;

(11) "management official" means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

(12) "collective bargaining" means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

(13) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(14) "conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

(B) relating to the classification of any position; or

(C) to the extent such matters are specifically provided for by Federal statute;

(15) "professional employee" means—

(A) an employee engaged in the performance of work—

(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

(ii) requiring the consistent exercise of discretion and judgment in its performance;

(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

(16) "exclusive representative" means any labor organization which—

(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

(i) on the basis of an election, or

(ii) on any basis other than an election,

and continues to be so recognized in accordance with the provisions of this chapter;

(17) "firefighter" means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

(18) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(b)(1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1192.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4703, 5401, 5596 of this title.

§ 7104. Federal Labor Relations Authority

(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

(c)(1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

(A) the date on which the member's successor takes office, or

(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

(f)(1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

(2) The General Counsel may—

(A) investigate alleged unfair labor practices under this chapter,

(B) file and prosecute complaints under this chapter, and

(C) exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1196.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7103 of this title.

§ 7105. Powers and duties of the Authority

(a)(1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority—

(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;

(E) resolves issues relating to the duty to bargain in good faith under section 7117(c) of this title;

(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117 (d) of this title;

(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title;

(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

(b) The Authority shall adopt an official seal which shall be judicially noticed.

(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.

(e)(1) The Authority may delegate to any regional director its authority under this chapter—

(A) to determine whether a group of employees is an appropriate unit;

(B) to conduct investigations and to provide for hearings;

(C) to determine whether a question of representation exists and to direct an election; and

(D) to supervise or conduct secret ballot elections and certify the results thereof.

(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

(1) the date of the action; or

(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

(g) In order to carry out its functions under this chapter, the Authority may—

(1) hold hearings;

(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7132 of this title; and

(3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1196.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7118 of this title.

§ 7106. Management rights

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws—

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from—

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

(Added Pub. L. 95-454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1198.)

SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

§ 7111. Exclusive recognition of labor organizations

(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

(b) If a petition is filed with the Authority—

(1) by any person alleging—

(A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after a reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose—

(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

(2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

(A) the collective bargaining agreement has been in effect for more than 3 years, or

(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1199.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7103, 7105 of this title.

§ 7112. Determination of appropriate units for labor organization representation

(a)(1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the agency involved.

(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

(1) except as provided under section 7135(a)(2) of this title, any management official or supervisor;

(2) a confidential employee;

(3) an employee engaged in personnel work in other than a purely clerical capacity;

(4) an employee engaged in administering the provisions of this chapter;

(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

(1) which represents other individuals to whom such provision applies; or

(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1200.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7105, 7123 of this title.

§ 7113. National consultation rights

(a)(1)[1] If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

(b)(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views of recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1201.)

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[1] Subsection (a) enacted without a par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7105 of this title.

§ 7114. Representation rights and duties

(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

(3) Each agency shall annually inform its employees of their rights under paragraph (2)(B) of this subsection.

(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from—

(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

(B) exercising grievance or appellate rights established by law, rule, or regulation;

except in the case of grievance or appeal procedures negotiated under this chapter.

(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

(c)(1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1202.)

§ 7115. Allotments to representatives

(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

(2) the employee is suspended or expelled from membership in the exclusive representative.

(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit

in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1203.)

§ 7116. Unfair labor practices

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121 (e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(e) The expression of any personal view, argument, opinion or the making of any statement which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

(2) corrects the record with respect to any false or misleading statement made by any person, or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

(Added Pub. L. 95-454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1204.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5596, 7103, 7120 of this title.

§ 7117. Duty to bargain in good faith; compelling need; duty to consult

(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

(b)(1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—

(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

(B) the Authority determines that a compelling need for a rule or regulation does not exist.

(3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

(c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

(A) filing a petition with the Authority; and

(B) furnishing a copy of the petition to the head of the agency.

(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall—

(A) file with the Authority a statement—

(i) withdrawing the allegation; or

(ii) setting forth in full its reasons supporting the allegation; and

(B) furnish a copy of such statement to the exclusive representative.

(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

(5) A hearing may be held in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefore at the earliest practicable date.

(d)(1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1205.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7105 of this title.

§ 7118. Prevention of unfair labor practices

(a)(1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

(A) of the charge;

(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and

(C) of the time and place fixed for the hearing.

(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(5) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning

the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1207.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7105, 7123 of this title.

§ 7119. Negotiation impasses; Federal Service Impasses Panel

(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse—

(1) either party may request the Federal Service Impasses Panel to consider the matter, or

(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

(c)(1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

(5)(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

(i) recommend to the parties procedures for the resolution of the impasse; or

(ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

(i) hold hearings;

(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7132 of this title; and

(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1208.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (c)(4), is set out under section 5332 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7103, 7114, 7133 of this title.

§ 7120. Standards of conduct for labor organizations

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and finan-

cial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1210.)

SUBCHAPTER III—GRIEVANCES

§ 7121. Grievance procedures

(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d) and (e) of this section, the procedures shall be the exclusive procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

(1) be fair and simple,

(2) provide for expeditious processing, and

(3) include procedures that—

(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(B) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning—

(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

(2) retirement, life insurance, or health insurance;

(3) a suspension or removal under section 7532 of this title;

(4) any examination, certification, or appointment; or

(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action

that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e)(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

(Added Pub. L. 95-454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1211.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7116, 7122 of this title.

§ 7122. Exceptions to arbitral awards

(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121(f) of this title). If upon review the Authority finds that the award is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

(Added Pub. L. 95-454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1212.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7105, 7123 of this title.

§ 7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under—

(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact,

if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1213.)

SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

§ 7131. Official time

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section—

(1) any employee representing an exclusive representative, or

(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1214.)

§ 7132. Subpenas

(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) In the case of contumacy or failure to obey a subpena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Witnesses (whether appearing voluntarily or under subpena) shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1214.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7105, 7119 of this title.

§ 7133. Compilation and publication of data

(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

(Added Pub. L. 95-454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1215.)

§ 7134. Regulations

The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

(Added Pub. L. 95-454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1215.)

§ 7135. Continuation of existing laws, recognitions, agreements, and procedures

(a) Nothing contained in this chapter shall preclude—

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.

(Added Pub. L. 95-454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1215.)

REFERENCES IN TEXT

For the effective date of this chapter, referred to in text, as 90 days after the date of the enactment of Pub. L. 95-454, which was approved Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Executive Orders 11491, 11616, 11636, and 11838, referred to in subsec. (b), are set out as notes under section 7101 of this title.

Executive Order 11787, referred to in subsec. (b), is set out as a note under section 7701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7112 of this title.

[§§ 7151 to 7154. Transferred]

CODIFICATION

Section 7151, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 523, which related to the antidiscrimination policy of the United States with respect to employment, was redesignated as section 7201 of this title by Pub. L. 95-454, title VII, § 703(a)(1), Oct. 13, 1978, 92 Stat. 1216.

Section 7152, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 523; Pub. L. 92-187, § 3, Dec. 15, 1971, 85 Stat. 644, which related to the prohibition respecting employment discrimination because of marital status, was redesignated as section 7202 of this title by Pub. L. 95-454, title VII, § 703(a)(1), Oct. 13, 1978, 92 Stat. 1216.

Section 7153, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 523, which related to the prohibition respecting employment discrimination because of physical handicap, was redesignated as section 7203 of this title by Pub. L. 95-454, title VII, 703(a)(1), Oct. 13, 1978, 92 Stat. 1216.

Section 7154, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 523; Pub. L. 90-83, § 1(44), Sept. 11, 1967, 81 Stat. 208; Pub. L. 92-392, § 8, Aug. 19, 1972, 86 Stat. 573, which related to the prohibition respecting discrimination because of race, color, creed, sex, or marital status in the administration of chapter 51, subchapter III and IV of chapter 53, and sections 305 and 3324 of this title, was redesignated as section 7204 of this title by Pub. L. 95-454, title VII, § 703(a)(1), Oct. 13, 1978, 92 Stat. 1216.

CHAPTER 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS

SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT

Sec.
7201. Antidiscrimination policy; minority recruitment program.
7202. Marital status.
7203. Handicapping condition.
7204. Other prohibitions.

SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

7211. Employees' right to petition Congress

AMENDMENTS

1978—Pub. L. 95-454, title VII, § 703(a)(2), Oct. 13, 1978, 92 Stat. 1217, struck out heading "SUBCHAPTER II—ANTIDISCRIMINATION IN EMPLOYMENT" and substituted therefor a chapter heading "CHAPTER 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS" together with the analysis of chapter 72 containing subchapters I, consisting of items 7201 to 7204, and subchapter II, consisting of item 7211.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 39 section 410.

SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT[1]

§ 7201. Antidiscrimination policy; minority recruitment program

(a) For the purpose of this section—

(1) "underrepresentation" means a situation in which the number of members of a mi-

[1] Subchapter heading has been editorially supplied.

nority group designation (determined by the Equal Employment Opportunity Commission in consultation with the Office of Personnel Management, on the basis of the policy set forth in subsection (b) of this section) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey, under title 13, and

(2) "category of civil service employment" means—

(A) each grade of the General Schedule described in section 5104 of this title;

(B) each position subject to subchapter IV of chapter 53 of this title;

(C) such occupational, professional, or other groupings (including occupational series) within the categories established under subparagraphs (A) and (B) of this paragraph as the Office determines appropriate.

(b) It is the policy of the United States to insure equal employment opportunities for employees without discrimination because of race, color, religion, sex, or national origin. The President shall use his existing authority to carry out this policy.

(c) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Office of Personnel Management shall, by regulation, implement a minority recruitment program which shall provide, to the maximum extent practicable—

(1) that each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the policy set forth in subsection (b) in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited; and

(2) that the Office conduct a continuing program of—

(A) assistance to agencies in carrying out programs under paragraph (1) of this subsection, and

(B) evaluation and oversight and such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation.

(d) Not later than 60 days after the date of the enactment of the Civil Service Reform Act of 1978, the Equal Employment Opportunity Commission shall—

(1) establish the guidelines proposed to be used in carrying out the program required under subsection (c) of this section; and

(2) make determinations of underrepresentation which are proposed to be used initially under such program; and

(3) transmit to the Executive agencies involved, to the Office of Personnel Management, and to the Congress the determinations made under paragraph (2) of this subsection.

(e) Not later than January 31 of each year, the Office shall prepare and transmit to each House of the Congress a report on the activities of the Office and of Executive agencies under subsection (c) of this section, including the affirmative action plans submitted under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), the personnel data file maintained by the Office of Personnel Management, and any other data necessary to evaluate the effectiveness of the program for each category of civil service employment and for each minority group designation, for the preceding fiscal year, together with recommendations for administrative or legislative action the Office considers appropriate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, § 7151, renumbered and amended Pub. L. 95–454, title III, § 310, title VII, § 703(a)(1), Oct. 13, 1978, 92 Stat. 1152, 1216.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 2000 e(b) (2d proviso).	July 2, 1964, Pub. L. 88-352, § 701(b) (2d proviso), 78 Stat. 254.

The word "Federal" is omitted as unnecessary in view of the definition of "employee" in section 2105.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The date of the enactment of the Civil Service Reform Act of 1978, referred to in subsecs. (c) and (d), is the date of the enactment of Pub. L. 95–454, which was approved Oct. 13, 1978.

AMENDMENTS

1978—Pub. L. 95–454, § 310(1), in the section catchline substituted "Antidiscrimination policy; minority recruitment program" for "Policy".

Subsec. (a). Pub. L. 95–454, § 310(2), added subsec. (a).

Subsec. (b). Pub. L. 95–454, § 310(3), designated existing provisions as subsec. (b).

Subsecs. (c) to (e). Pub. L. 95–454, § 310(4), added subsecs. (c) to (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 310 of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

DISCRIMINATION PROHIBITED IN EMPLOYMENT OF CIVILIAN PERSONNEL AT FACILITIES OPERATED BY THE DEPARTMENT OF DEFENSE IN FOREIGN COUNTRIES

Pub. L. 92–129, title I, § 106, Sept. 28, 1971, 85 Stat. 355, provided that: "Unless prohibited by treaty, no person shall be discriminated against by the Department of Defense or by any officer or employee thereof, in the employment of civilian personnel at any facility or installation operated by the Department of Defense in any foreign country because such person is a citizen of the United States or is a dependent of a member of the Armed Forces of the United States. As used in this section, the term 'facility or installation operated by the Department of Defense' shall include, but shall not be limited to, any officer's club, non-commissioned officers' club, post exchange, or commissary store."

CROSS REFERENCES

Nondiscrimination on account of age in Federal Government employment, see section 633a of Title 29, Labor.

Nondiscrimination on account of age in Federally assisted programs, see section 6101 et seq. of Title 42, The Public Health and Welfare.

§ 7202. Marital status

(a) The President may prescribe rules which shall prohibit, as nearly as conditions of good administration warrant, discrimination because of marital status in an Executive agency or in the competitive service.

(b) Regulations prescribed under any provision of this title, or under any other provision of law, granting benefits to employees, shall provide the same benefits for a married female employee and her spouse and children as are provided for a married male employee and his spouse and children.

(c) Notwithstanding any other provision of law, any provision of law providing a benefit to a male Federal employee or to his spouse or family shall be deemed to provide the same benefit to a female Federal employee or to her spouse or family.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 523, § 7152, amended Pub. L. 92-187, § 3, Dec. 15, 1971, 85 Stat. 644, and renumbered Pub. L. 95-454, title VII, § 703(a)(1), Oct. 13, 1978, 92 Stat. 1216.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 633 (2)6 (less 1st sentence).	July 26, 1937, ch. 522, 50 Stat. 533.

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. The section is rewritten as a general prohibition instead of specifying each of the personnel actions to which the prohibition applies. The words "in an Executive agency or in the competitive service" are added for clarity. The sentence "All Acts or parts of Acts inconsistent herewith are repealed." is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1971—Pub. L. 92-187 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

CROSS REFERENCES

President's power to grant exceptions from provisions of this section, see section 3302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3302 of this title.

§ 7203. Handicapping condition

The President may prescribe rules which shall prohibit, as nearly as conditions of good administration warrant, discrimination because of handicapping condition in an Executive agency or in the competitive service with respect to a position the duties of which, in the opinion of the Office of Personnel Management, can be performed efficiently by an individual with a handicapping condition, except that the employment may not endanger the health or safety of the individual or others.

(Pub. L. 89-544, Sept. 6, 1966, 80 Stat. 523, § 7153, renumbered and amended Pub. L. 95-454, title I, § 101(b)(2), title VII, § 703(a)(1), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1118, 1216, 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 633(2)9	June 10, 1948, ch. 434, 62 Stat. 351.

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. The section is rewritten as a general prohibition instead of specifying the personnel actions included in former section 633(2)9. The words "in an Executive agency or in the competitive service" are added for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454, §§ 101(b)(2), 906(a)(2), substituted "Handicapping conditon" for "Physical handicap" in the section catchline, "handicapping condition" for "physical handicap" wherever appearing in the text, and "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by sections 101(b)(2) and 906(a)(2) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

CROSS REFERENCES

President's power to grant exceptions from provisions of this section, see section 3302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3302 of this title.

§ 7204. Other prohibitions

[(a) Repealed. Pub. L. 90-83, § 1(44), Sept. 11, 1967, 81 Stat. 208.]

(b) In the administration of chapter 51, subchapters III and IV of chapter 53, and sections 305 and 3324 of this title, discriminations because of race, color, creed, sex, or marital status is prohibited with respect to an individual or a position held by an individual.

(c) The Office of Personnel Management may prescribe regulations necessary for the administration of subsection (b) of this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 523, § 7154, amended Pub. L. 90-83, § 1(44), Sept. 11, 1967, 81 Stat. 208; Pub. L. 92-392, § 8, Aug. 19, 1972, 86 Stat. 573; renumbered and amended Pub. L. 95-454, title VII, § 703(a)(1), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1216, 1224.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a).....	5 U.S.C. 33	R.S. § 165.
(b).....	5 U.S.C. 1074	Oct. 28, 1949, ch. 782, § 1103, 63 Stat. 972.

In subsection (a), the words "Executive department" are substituted for "department" as the definition of "department" applicable to this section is coextensive with the definition of "Executive department" in section 101. The words "or military department" are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this subsection, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301. The words "in the discretion of" are omitted as unnecessary in view of the permissive grant of authority. The words "positions in the department" are substituted for "any of the clerkships therein authorized by law". The words "upon the same requisites and conditions" are omitted as unnecessary. The words "legal pay of the position to which appointed" are substituted for "same compensations, as are prescribed for men."

This subsection was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, § 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides "Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense" is omitted from this title, but is not repealed.

Subsection (c) is added on authority of former sections 1072 and 1072a, which are codified in section 5115.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section deletes subsection (a) of 5 U.S.C. 7154 to reflect the repeal of the source statute of that subsection by Public Law 89–261, 79 Stat. 987.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95–454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

1972—Subsec. (b). Pub. L. 92–392 included reference to subchapter IV of chapter 53 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after the 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as a note under section 5341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2105 of this title; title 10 sections 4540, 7212, 9540.

SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

§ 7211. Employees' right to petition Congress

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

(Added Pub. L. 95–454, title VII, § 703(a)(3), Oct. 13, 1978, 92 Stat. 1217.)

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 1002.

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I—REGULATION OF CONDUCT

§ 7301. Presidential regulations

EX. ORD. NO. 11491. LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

Ex. Ord. No. 11491, Oct. 29, 1969, 34 F.R. 17605, as amended, is now set out as a note under section 7101 of this title.

SUBCHAPTER II—EMPLOYMENT LIMITATIONS

§ 7311. Loyalty and striking

EX. ORD. NO. 10450. SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYEES

Ex. Ord. No. 10450, Apr. 27, 1953, 18 F.R. 2489, as amended by Ex. Ord. No. 10491, Oct. 15, 1953, 18 F.R. 6583; Ex. Ord. No. 10531, May 27, 1954, 19 F.R. 3069; Ex. Ord. No. 10548, Aug. 3, 1954, 19 F.R. 4871; Ex. Ord. No. 10550, Aug. 6, 1954, 19 F.R. 4981; Ex. Ord. No. 11605, July 2, 1971, 36 F.R. 12831; Ex. Ord. No. 11785, June 4, 1974, 39 F.R. 20053; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[See main edition for text of first three pars., secs. 1 and 2]

SEC. 3. (a) The appointment of each civilian officer or employee in any department or agency and shall not be reemployed in any other department or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: Provided, that upon request of the head of the department or agency concerned, the Office of Personnel Management may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees,

or aliens employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investigation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

[*See main edition for text of (b), secs. 4 to 6*]

SEC. 7. Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which finding shall be made a part of the records of such department or agency: Provided, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Office of Personnel Management that such person is eligible for such employment.

SEC. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

[*See main edition for text of (1) to (8)*]

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Office of Personnel Management, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Office. The Office shall furnish a full investigative report to the department or agency concerned.

(c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the competitive service shall primarily be the responsibility of the employing department or agency. Departments and agencies without investigative facilities may use the investigative facilities of the Office of Personnel Management, and other departments and agencies may use such facilities under agreement with the Office.

[*See main edition for text of (d)*]

SEC. 9. (a) There shall be established and maintained in the Office of Personnel Management a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Office under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security-investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950.

(b) The heads of all departments and agencies shall furnish promptly to the Office of Personnel Management information appropriate for the establishment and maintenance of the security-investigations index.

[*See main edition for text of (c) and sec. 10*]

SEC. 11. On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 21, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional loyalty boards of the Office of Personnel Management on which hearings have not been initiated on such date shall be referred to the department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion, and the determination of the board shall be forwarded to the head of the department or agency concerned: Provided, that if no specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pending in the Federal Bureau of Investigation or the Office of Personnel Management on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

[*See main edition for text of secs. 12 and 13*]

SEC. 14. (a) The Office of Personnel Management, with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

(1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of or directly or indirectly weaken, the national security.

(2) Tendencies in such programs to deny to individual employees fair, impartial and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Office of Personnel Management shall report to the National Security Council, at least semiannually, on the results of such study, shall recommend means to correct any such deficiencies or tendencies, and shall inform the National Security Council immediately of any deficiency which is deemed to be of major importance.

(b) All departments and agencies of the Government are directed to cooperate with the Office of Personnel Management to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

(c) To assist the Office of Personal Management in discharging its responsibilities under this order, the head of each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to a full field investigation under the provisions of this order, advise the Office as to the action taken with respect to such officer or employee. The information furnished by the heads of de-

partments and agencies pursuant to this section shall be included in the reports which the Office of Personal Management is required to submit to the National Security Council in accordance with subsection (a) of this section. Such reports shall set forth any deficiencies on the part of the heads of departments and agencies in taking timely action under this order, and shall mention specifically any instances of noncompliance with this subsection.

[See main edition for text of sec. 15]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3333, 7103 of this title; title 18 section 1918.

§ 7312. Employment and clearance; individuals removed for national security

Removal under section 7532 of this title does not affect the right of an individual so removed to seek or accept employment in an agency of the United States other than the agency from which removed. However, the appointment of an individual so removed may be made only after the head of the agency concerned has consulted with the Office of Personnel Management. The Office, on written request of the head of the agency or the individual so removed, may determine whether the individual is eligible for employment in an agency other than the agency from which removed.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978 Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SUBCHAPTER III—POLITICAL ACTIVITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1206, 4703, 7103, 7121 of this title; title 42 sections 3522, 4309, 5055.

§ 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7325, 7326, 7327 of this title; title 42 sections 1973d, 2000e-4; title 50 App. section 463.

SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS

§ 7342. Receipt and disposition of foreign gifts and decorations

(a) For the purpose of this section—

(1) "employee" means—

(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(B) an expert or consultant who is under contract under section 3109 of this title with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under such section, any individual involved in the performance of such services;

(C) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or the government of the District of Columbia;

(D) a member of a uniformed service;

(E) the President and the Vice President;

(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and

(G) the spouse of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1954) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F);

(2) "foreign government" means—

(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and

(C) any agent or representative of any such unit or such organization, while acting as such;

(3) "gift" means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government;

(4) "decoration" means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government;

(5) "minimal value" means a retail value in the United States at the time of acceptance of $100 or less, except that—

(A) on January 1, 1981, and at 3 year intervals thereafter, "minimal value" shall be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and

(B) regulations of an employing agency may define "minimal value" for its employees to be less than the value established under this paragraph; and

(6) "employing agency" means—

(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in subsections (c)(2)(A), (e)(1), and (g)(2)(B) shall be carried out by the Clerk of the House;

(B) the Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities

(other than responsibilities involving approval of the employing agency) specified in subsections (c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate;

(C) the Administrative Office of the United States Courts, for judges and judicial branch employees; and

(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

(b) An employee may not—

(1) request or otherwise encourage the tender of a gift or decoration; or

(2) accept a gift or decoration, other than in accordance with the provisions of subsections (c) and (d).

(c)(1) The Congress consents to—

(A) the accepting and retaining by an employee of a gift of minimal value tendered and received as a souvenir or mark of courtesy; and

(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that—

(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; and

(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.

(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(ii)), an employee shall—

(A) deposit the gift for disposal with his or her employing agency; or

(B) subject to the approval of the employing agency, deposit the gift with that agency for official use.

Within 30 days after terminating the official use of a gift under subparagraph (B), the employing agency shall forward the gift to the Administrator of General Services in accordance with subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2).

(3) When an employee deposits a gift of more than minimal value for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in paragraph (1)(B)(ii) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency, the employee shall file a statement with his or her employing agency or its delegate containing the information prescribed in subsection (f) for that gift.

(d) The Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the employing agency of such employee. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within sixty days of acceptance, with the employing agency for official use, for forwarding to the Administrator of General Services for disposal in accordance with subsection (e)(1), or for disposal in accordance with subsection (e)(2).

(e)(1) Except as provided in paragraph (2), gifts and decorations that have been deposited with an employing agency for disposal shall be (A) returned to the donor, or (B) forwarded to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949. However, no gift or decoration that has been deposited for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. Gifts and decorations may be sold by negotiated sale.

(2) Gifts and decorations received by a Senator or an employee of the Senate that are deposited with the Secretary of the Senate for disposal, or are deposited for an official use which has terminated, shall be disposed of by the Commission on Arts and Antiquities of the United States Senate. Any such gift or decoration, may be returned by the Commission to the donor or may be transferred or donated by the Commission, subject to such terms and conditions as it may prescribe, (A) to an agency or instrumentality of (i) the United States, (ii) a State, territory, or possession of the United States, or a political subdivision of the foregoing, or (iii) the District of Columbia, or (B) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code. Any such gift or decoration not disposed of as provided in the preceding sentence shall be forwarded to the Administrator of General Services for disposal in accordance with paragraph (1). If the Administrator does not dispose of such gift or decoration within one year, he shall, at the request of the Commission, return it to the Commission and the Commission may dispose of such gift or decoration in such manner as it considers proper, except that such gift or decoration may be sold only with the approval of the Secretary of State upon a determination that the sale will not adversely affect the foreign relations of the United States.

(f)(1) Not later than January 31 of each year, each employing agency or its delegate shall compile a listing of all statements filed during the preceding year by the employees of that agency pursuant to subsection (c)(3) and shall transmit such listing to the Secretary of State

who shall publish a comprehensive listing of all such statements in the Federal Register.

(2) Such listings shall include for each tangible gift reported—

(A) the name and position of the employee;

(B) a brief description of the gift and the circumstances justifying acceptance;

(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift;

(D) the date of acceptance of the gift;

(E) the estimated value in the United States of the gift at the time of acceptance; and

(F) disposition or current location of the gift.

(3) Such listings shall include for each gift of travel or travel expenses—

(A) the name and position of the employee;

(B) a brief description of the gift and the circumstances justifying acceptance; and

(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

(4) In transmitting such listings for the Central Intelligence Agency, the Director of Central Intelligence may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.

(g)(1) Each employing agency shall prescribe such regulations as may be necessary to carry out the purpose of this section. For all employing agencies in the executive branch, such regulations shall be prescribed pursuant to guidance provided by the Secretary of State. These regulations shall be implemented by each employing agency for its employees.

(2) Each employing agency shall—

(A) report to the Attorney General cases in which there is reason to believe that an employee has violated this section;

(B) establish a procedure for obtaining an appraisal, when necessary, of the value of gifts; and

(C) take any other actions necessary to carry out the purpose of this section.

(h) The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $5,000.

(i) The President shall direct all Chiefs of a United States Diplomatic Mission to inform their host governments that it is a general policy of the United States Government to prohibit United States Government employees from receiving gifts or decorations of more than minimal value.

(j) Nothing in this section shall be construed to derogate any regulation prescribed by any employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees.

(k) The provisions of this section do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

(As amended Pub. L. 95–105, title V, § 515(a)(1), Aug. 17, 1977, 91 Stat. 862; Pub. L. 95–426, title VII, § 712(a)–(c), Oct. 7, 1978, 92 Stat. 994.)

REFERENCES IN TEXT

Section 152 of the Internal Revenue Code of 1954, referred to in subsec. (a)(1)(G), is classified to section 152 of Title 26, Internal Revenue Code.

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (e)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of that act relating to disposal of government property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

Section 501 of the Internal Revenue Code of 1954, referred to in subsec. (e)(2), is classified to section 501 of Title 26, Internal Revenue Code.

Section 108A of the Mutual Educational and Cultural Exchange Act of 1961, referred to in subsec. (k), is classified to section 2458a of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1978 Subsec. (a)(6)(A). Pub. L. 95–426, § 712(a)(1), substituted "(e)(1)" for "(e)".

Subsec. (a)(6)(B). Pub. L. 95–426, § 712(a)(2), added ", except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsection (c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate".

Subsec. (c)(2). Pub. L. 95–426, § 712(b)(1), substituted "subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2)" for "subsection (e)".

Subsec. (d). Pub. L. 95–426, § 712(b)(2), substituted "official use, for forwarding", for "official use, or forwarding", and "subsection (e)(1), or for disposal in accordance with subsection (e)(2)" for "subsection (e)".

Subsec. (e). Pub. L. 95–426, § 712(c), designated existing provisions as par. (1) and in par. (1) as so designated, substituted "Except as provided in paragraph (2), gifts" for "Gifts", "(A)" and "(B)" for "(1)" and "(2)", respectively, and added par. (2).

1977—Subsec. (a). Pub. L. 95–105 in par. (1) added provisions expanding definition of "employee" to include an officer or employee of the United States Postal Service or Postal Rate Commission, certain experts and consultants, the Vice President, and any Delegate to Congress, in par. (2) incorporated existing provisions into subpars. (A) and (C) and added subpar. (B), in par. (3) substituted reference to tangible or intangible present for reference to present, in par. (4) added reference to award, and added pars. (5) and (6).

Subsec. (b). Pub. L. 95–105 designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 95–105 incorporated existing provisions of pars. (1) and (2) into par. (1), and in par. (1) as so incorporated, added provisions giving congressional consent to acceptance of a gift in the nature of an educational scholarship, medical treatment, or travel or travel expenses and added pars. (2) and (3).

Subsec. (d). Pub. L. 95–105 struck out provisions requiring the Secretary of State to concur with the approval of the employing agency and substituted provisions requiring the employee to deposit property within 60 days of acceptance with the employing agency for official use or forwarding to the Administrator of General Services for disposal for provisions requiring the employee to deposit the decoration for use and disposal as the property of the United States under regulations prescribed under this section.

Subsec. (e). Pub. L. 95–105 substituted provisions relating to the disposal of decorations for provisions au-

thorizing the President to prescribe regulations to carry out the purposes of this section.

Subsecs. (f) to (k). Pub. L. 95-105 added subsecs. (f) to (k).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 515(a)(2) of Pub. L. 95-105 provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall take effect on January 1, 1978."

LEASING OF SPACE AND FACILITIES FOR STORING AND SAFEGUARDING PROPERTY

Section 712(d) of Pub. L. 95-426 provided that: "In the event that the space and facilities available to the Secretary of the Senate for carrying out his responsibilities in storing and safeguarding pr operty in his custody under section 7342 of title 5, United States Code, are insufficient for such purpose, he may, with the approval of the Committee on Rules and Administration of the Senate, lease such space and facilities as may be necessary for such purpose. Rental payments under any such lease and expenses incurred in connection therewith shall be paid from the contingent fund of the Senate upon vouchers approved by the Secretary of the Senate."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 707; title 22 sections 2458a, 2694; title 28 App. sections 307, 308.

CHAPTER 75—ADVERSE ACTIONS

SUBCHAPTER I—SUSPENSION OF 14 DAYS OR LESS

Sec.
7501. Definitions.
7502. Actions covered.
7503. Cause and procedure.
7504. Regulations.

SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

7511. Definitions; application.
7512. Actions covered.
7513. Cause and procedure.
7514. Regulations.

SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

7521. Actions against administrative law judges.

SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

7541. Definitions.
7542. Actions covered.
7543. Cause and procedure.

AMENDMENTS

1978—Pub. L. 95-454, title II, § 204(b), title IV, § 411(1), Oct. 13, 1978, 92 Stat. 1137, 1173, in the heading for subchapter I substituted "Suspension of 14 days or less" for "Competitive service", in item 7501 substituted "Definitions" for "Cause; procedure; exception", added items 7502 to 7504, in the heading for subchapter II substituted "Removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less" for "Preference eligibles", in item 7511 added "; application", in item 7512 substituted "Actions covered" for "Cause; procedure; exception", added items 7513 and 7514, in the heading for subchapter III substituted "Administrative law judges" for "Hearing examiners", in item 7521 substituted "Actions against administrative law judges" for "Removal", and added subchapter V and items 7541 to 7543.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2108, 2302, 3382 of this title; title 39 section 1005; title 50 App. section 2168.

SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS

AMENDMENTS

1978—Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1134, in the subchapter heading substituted "Suspension for 14 days or less" for "Competitive service".

§ 7501. Definitions

For the purpose of this subchapter—

(1) "employee" means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

(2) "suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1134.)

PRIOR PROVISIONS

A prior section 7501, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 527, which related to removal or suspension without pay of an individual in the competitive service and procedures applicable to such removal or suspension, was repealed by Pub. L. 95-454, title II, § 204(a).

EFFECTIVE DATE

Subchapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7511, 7541 of this title; title 50 section 403.

§ 7502. Actions covered

This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1206 of this title.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135.)

§ 7503. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period or any other pattern of discourteous conduct).

(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

(1) an advance written notice stating the specific reasons for the proposed action;

(2) a reasonable time to answer orally and in writing and to furnish affidavits and other

documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135.)

§ 7504. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135.)

SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

Amendments

1978—Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135, in the subchapter heading substituted "Removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less" for "Preference eligibles".

Subchapter Referred to in Other Sections

This subchapter is referred to in section 7541 of this title.

§ 7511. Definitions; application

(a) For the purpose of this subchapter—

(1) "employee" means—

(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

(2) "suspension" has the meaning as set forth in section 7501(2) of this title;

(3) "grade" means a level of classification under a position classification system;

(4) "pay" means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

(5) "furlough" means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(b) This subchapter does not apply to an employee—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

(B) the President or the head of an agency for a position which is excepted from the competitive service by statute.

(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135.)

Prior Provisions

A prior section 7511, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528; Pub. L. 94–183, § 2(30), Dec. 31, 1975, 89 Stat. 1058, which defined the terms "preference eligible employee" and "adverse action" for purposes of this subchapter, was repealed by Pub. L. 95–454, title II, § 204(a).

Effective Date

Subchapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Section Referred to in Other Sections

This section is referred to in title 22 section 1438; title 32 section 709; title 38 sections 106, 4202.

§ 7512. Actions covered

This subchapter applies to—

(1) a removal;

(2) a suspension for more than 14 days;

(3) a reduction in grade;

(4) a reduction in pay; and

(5) a furlough of 30 days or less;

but does not apply to—

(A) a suspension or removal under section 7532 of this title,

(B) a reduction-in-force action under section 3502 of this title,

(C) the reduction in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,

(D) a reduction in grade or removal under section 4303 of this title, or

(E) an action initiated under section 1206 or 7521 of this title.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1136.)

Prior Provisions

A prior section 7512, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528, which related to adverse action against a preference eligible employee and procedures applicable to such adverse action, was repealed by Pub. L. 95–454, title II, § 204(a).

Section Referred to in Other Sections

This section is referred to in sections 559, 1305, 7121 of this title; title 15 section 1715; title 29 section 661;

title 30 section 823; title 39 section 3601; title 42 sections 2000e–4, 3608.

§ 7513. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1136.)

§ 7514. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1137.)

SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

Amendments

1978—Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1137, in the subchapter heading substituted "Administrative law judges" for "Hearing examiners".

§ 7521. Actions against administrative law judges

(a) An action may be taken against an administrative law judge appointed under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board.

(b) The actions covered by this section are—

(1) a removal;

(2) a suspension;

(3) a reduction in grade;

(4) a reduction in pay; and

(5) a furlough of 30 days or less;

but do not include—

(A) a suspension or removal under section 7532 of this title;

(B) a reduction-in-force action under section 3502 of this title; or

(C) any action initiated under section 1206 of this title.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1137.)

Prior Provisions

A prior section 7521, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528; Pub. L. 95–251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183, which related to removal of an administrative law judge appointed under section 3105 of this title, was repealed by Pub. L. 95–454, title II, § 204(a).

Effective Date

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Section Referred to in Other Sections

This section is referred to in sections 559, 1305, 7502, 7512 of this title; title 15 section 1715; title 29 section 661; title 30 section 823; title 39 section 3601; title 42 sections 2000e–4, 3608.

SUBCHAPTER IV—NATIONAL SECURITY

§ 7531. Definitions

Abolition of the Atomic Energy Commission

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

§ 7532. Suspension and removal

Section Referred to in Other Sections

This section is referred to in sections 3571, 7121, 7312, 7502, 7512, 7521, 7542 of this title; title 50 sections 832, 833.

§ 7533. Effect on other statutes

Transfer of Functions

The Atomic Energy Commission was abolished and its functions referred to in this section were transferred to the Administrator of the Energy Research and Development Administration and the Nuclear Regulatory Commission (unless otherwise specifically provided) by sections 5814 and 5841 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

§ 7541. Definitions

For the purpose of this subchapter—

(1) "employee" means a career appointee in the Senior Executive Service who—

(A) has completed the probationary period prescribed under section 3393(d) of this title; or

(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

(2) "suspension" has the meaning set forth in section 7501(2) of this title.

(Added Pub. L. 95–454, title IV, § 411(2), Oct. 13, 1978, 92 Stat. 1174.)

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454 , see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

§ 7542. Actions covered

This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1206 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 of this title.

(Added Pub. L. 95–454, title IV, § 411(2), Oct. 13, 1978, 92 Stat. 1174.)

§ 7543. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95–454, title IV, § 411(2), Oct. 13, 1978, 92 Stat. 1174.)

CHAPTER 77—APPEALS

Sec.
7701. Appellate procedures.
7702. Actions involving discrimination.
7703. Judicial review of decisions of the Merit Systems Protection Board.

AMENDMENTS

1978—Pub. L. 95–454, title II, § 205, Oct. 13, 1978, 92 Stat. 1138, in item 7701 substituted "Appellate procedures" for "Appeals of preference eligibles", and added items 7702 and 7703.

§ 7701. Appellate procedures

(a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right—

(1) to a hearing for which a transcript will be kept; and

(2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

(b) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from the service, the case shall be heard by the Board, an employee experienced in hearing appeals, or an administrative law judge. The Board, administrative law judge, or other employee (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a)(1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management.

(c)(1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision—

(A) in the case of an action based on unacceptable performance described in section 4303 of this title, is supported by substantial evidence, or

(B) in any other case, is supported by a preponderance of the evidence.

(2) Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee or applicant for employment—

(A) shows harmful error in the application of the agency's procedures in arriving at such decision;

(B) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title; or

(C) shows that the decision was not in accordance with law.

(d)(1) In any case in which—

(A) the interpretation or application of any civil service law, rule, or regulation, under the jurisdiction of the Office of Personnel Management is at issue in any proceeding under this section; and

(B) the Director of the Office of Personnel Management is of the opinion that an erroneous decision would have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office;

the Director may as a matter of right intervene or otherwise participate in that proceeding before the Board. If the Director exercises his right to participate in a proceeding before the Board, he shall do so as early in the proceeding as practicable. Nothing in this title shall be construed to permit the Office to interfere with the independent decisionmaking of the Merit Systems Protection Board.

(2) The Board shall promptly notify the Director whenever the interpretation of any civil service law, rule, or regulation under the jurisdiction of the Office is at issue in any proceeding under this section.

(e)(1) Except as provided in section 7702 of this title, any decision under subsection (b) of this section shall be final unless—

(A) a party to the appeal or the Director petitions the Board for review within 30 days after the receipt of the decision; or

(B) the Board reopens and reconsiders a case on its own motion.

The Board, for good cause shown, may extend the 30-day period referred to in subparagraph (A) of this paragraph. One member of the Board may grant a petition or otherwise direct that a decision be reviewed by the full Board. The preceding sentence shall not apply if, by law, a decision of an administration law judge is required to be acted upon by the Board.

(2) The Director may petition the Board for a review under paragraph (1) of this subsection only if the Director is of the opinion that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office.

(f) The Board, or an administrative law judge or other employee of the Board designated to hear a case, may—

(1) consolidate appeals filed by two or more appellants, or

(2) join two or more appeals filed by the same appellant and hear and decide them concurrently,

if the deciding official or officials hearing the cases are of the opinion that the action could result in the appeals' being processed more expeditiously and would not adversely affect any party.

(g)(1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employee of the Board designated to hear a case, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee, as the case may be, determines that payment by the agency is warranted in the interest of justice, including any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

(2) If an employee or applicant for employment is the prevailing party and the decision is based on a finding of discrimination prohibited under section 2302(b)(1) of this title, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

(h) The Board may, be regulation, provide for one or more alternative methods for settling matters subject to the appellate jurisdiction of the Board which shall be applicable at the election of an applicant for employment or of an employee who is not in a unit for which a labor organization is accorded exclusive recognition, and shall be in lieu of other procedures provided for under this section. A decision under such a method shall be final, unless the Board reopens and reconsiders a case at the request of the Office of Personnel Management under subsection (d) of this section.

(i)(1) Upon the submission of any appeal to the Board under this section, the Board, through reference to such categories of cases, or other means, as it determines appropriate, shall establish and announce publicly the date by which it intends to complete action on the matter. Such date shall assure expeditious consideration of the appeal, consistent with the interests of fairness and other priorities of the Board. If the Board fails to complete action on the appeal by the announced date, and the expected delay will exceed 30 days, the Board shall publicly announce the new date by which it intends to complete action on the appeal.

(2) Not later than March 1 of each year, the Board shall submit to the Congress a report describing the number of appeals submitted to it during the preceding calendar year, the number of appeals on which it completed action during that year, and the number of instances during that year in which it failed to conclude a proceeding by the date originally announced, together with an explanation of the reasons therefor.

(3) The Board shall by rule indicate any other category of significant Board action which the Board determines should be subject to the provisions of this subsection.

(4) It shall be the duty of the Board, an administrative law judge, or employee designated by the Board to hear any proceeding under this section to expedite to the extent practicable that proceeding.

(j) The Board may prescribe regulations to carry out the purpose of this section.

(As amended Pub. L. 95–454, title II, § 205, Oct. 13, 1978, 92 Stat. 1138.)

REFERENCES IN TEXT

The civil service law, referred to in subsecs. (d) and (e)(2), is set out in this title. See, particularly, section 3301 et seq. of this title.

AMENDMENTS

1978—Pub. L. 95-454 substituted in the section catchline "Appellate procedures" for "Appeals of preference eligibles" and substituted provisions relating to procedures applicable with respect to the Merit Systems Protection Board for an employee or applicant for employment, for provisions relating to appeals of preference eligible employees.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

EX. ORD. NO. 11787 APPEALS SYSTEM FOR EMPLOYEES

Ex. Ord. No. 11787, June 11, 1974, 39 F.R. 20675; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[See main edition for text of first par.]

SECTION 1. Except when otherwise provided by statute, the appeals system established by the Merit Systems Protection Board under chapter 77 of title 5 of the United States Code [this chapter], and section 22 of the Executive Order No. 11491 of October 29, 1969 [set out as a note under section 7101 of this title], shall constitute the sole system of appeal for an employee who is covered by that appeals system.

[See main edition for text of secs. 2 and 3]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1206, 3592, 4303, 5596, 7121, 7513, 7543, 7702, 7703 of this title; title 22 section 1438; title 38 sections 106, 4202.

§ 7702. Actions involving discrimination

(a)(1) Notwithstanding any other provision of law, and except as provided in paragraph (2) of this subsection, in the case of any employee or applicant for employment who—

(A) has been effected by an action which the employee or applicant may appeal to the Merit Systems Protection Board, and

(B) alleges that a basis for the action was discrimination prohibited by—

(i) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16c),[1]

(ii) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)),

(iii) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791),

(iv) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), or

(v) any rule, regulation, or policy directive prescribed under any provision of law described in clauses (i) through (iv) of this subparagraph,

the Board shall, within 120 days of the filing of the appeal, decide both the issue of discrimination and the appealable action in accordance with the Board's appellate procedures under section 7701 of this title and this section.

(2) In any matter before an agency which involves—

(A) any action described in paragraph (1)(A) of this subsection; and

(B) any issue of discrimination prohibited under any provision of law described in paragraph (1)(B) of this subsection;

the agency shall resolve such matter within 120 days. The decision of the agency in any such matter shall be a judicially reviewable action unless the employee appeals the matter to the Board under paragraph (1) of this subsection.

(3) Any decision of the Board under paragraph (1) of this subsection shall be a judicially reviewable action as of—

(A) the date of issuance of the decision if the employee or applicant does not file a petition with the Equal Employment Opportunity Commission under subsection (b)(1) of this section, or

(B) the date the Commission determines not to consider the decision under subsection (b)(2) of this section.

(b)(1) An employee or applicant may, within 30 days after notice of the decision of the Board under subsection (a)(1) of this section, petition the Commission to consider the decision.

(2) The Commission shall, within 30 days after the date of the petition, determine whether to consider the decision. A determination of the Commission not to consider the decision may not be used as evidence with respect to any issue of discrimination in any judicial proceeding concerning that issue.

(3) If the Commission makes a determination to consider the decision, the Commission shall, within 60 days after the date of the determination, consider the entire record of the proceedings of the Board and, on the basis of the evidentiary record before the Board, as supplemented under paragraph (4) of this subsection, either—

(A) concur in the decision of the Board; or

(B) issue in writing another decision which differs from the decision of the Board to the extent that the Commission finds that, as a matter of law—

(i) the decision of the Board constitutes an incorrect interpretation of any provision of any law, rule, regulation, or policy directive referred to in subsection (a)(1)(B) of this section, or

(ii) the decision involving such provision is not supported by the evidence in the record as a whole.

(4) In considering any decision of the Board under this subsection, the Commission may refer the case to the Board, or provide on its own, for the taking (within such period as permits the Commission to make a decision within the 60-day period prescribed under this subsection) of additional evidence to the extent it considers necessary to supplement the record.

(5)(A) If the Commission concurs pursuant to paragraph (3)(A) of this subsection in the decision of the Board, the decision of the Board shall be a judicially reviewable action.

(B) If the Commission issues any decision under paragraph (3)(B) of this subsection, the Commission shall immediately refer the matter to the Board.

[1] So in original. Probably should be "(42 U.S.C. 2000e–16)".

(c) Within 30 days after receipt by the Board of the decision of the Commission under subsection (b)(5)(B) of this section, the Board shall consider the decision and—

(1) concur and adopt in whole the decision of the Commission; or

(2) to the extent that the Board finds that, as a matter of law, (A) the Commission decision constitutes an incorrect interpretation of any provision of any civil service law, rule, regulation or policy directive, or (B) the Commission decision involving such provision is not supported by the evidence in the record as a whole—

(i) reaffirm the initial decision of the Board; or

(ii) reaffirm the initial decision of the Board with such revisions as it determines appropriate.

If the Board takes the action provided under paragraph (1), the decision of the Board shall be a judicially reviewable action.

(d)(1) If the Board takes any action under subsection (c)(2) of this section, the matter shall be immediately certified to a special panel described in paragraph (6) of this subsection. Upon certification, the Board shall, within 5 days (excluding Saturdays, Sundays, and holidays), transmit to the special panel the administrative record in the proceeding, including—

(A) the factual record compiled under this section,

(B) the decisions issued by the Board and the Commission under this section, and

(C) any transcript of oral arguments made, or legal briefs filed, before the Board or the Commission.

(2)(A) The special panel shall, within 45 days after a matter has been certified to it, review the administrative record transmitted to it and, on the basis of the record, decide the issues in dispute and issue a final decision which shall be a judicially reviewable action.

(B) The special panel shall give due deference to the respective expertise of the Board and Commission in making its decision.

(3) The special panel shall refer its decision under paragraph (2) of this subsection to the Board and the Board shall order any agency to take any action appropriate to carry out the decision.

(4) The special panel shall permit the employee or applicant who brought the complaint and the employing agency to appear before the panel to present oral arguments and to present written arguments with respect to the matter.

(5) Upon application by the employee or applicant, the Commission may issue such interim relief as it determines appropriate to mitigate any exceptional hardship the employee or applicant might otherwise incur as a result of the certification of any matter under this subsection, except that the Commission may not stay, or order any agency to review on an interim basis, the action referred to in subsection (a)(1) of this section.

(6)(A) Each time the Board takes any action under subsection (c)(2) of this section, a special panel shall be convened which shall consist of—

(i) an individual appointed by the President, by and with the advice and consent of the Senate, to serve for a term of 6 years as chairman of the special panel each time it is convened;

(ii) one member of the Board designated by the Chairman of the Board each time a panel is convened; and

(iii) one member of the Commission designated by the Chairman of the Commission each time a panel is convened.

The chairman of the special panel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(B) The chairman is entitled to pay at a rate equal to the maximum annual rate of basic pay payable under the General Schedule for each day he is engaged in the performance of official business on the work of the special panel.

(C) The Board and the Commission shall provide such administrative assistance to the special panel as may be necessary and, to the extent practicable, shall equally divide the costs of providing the administrative assistance.

(e)(1) Notwithstanding any other provision of law, if at any time after—

(A) the 120th day following the filing of any matter described in subsection (a)(2) of this section with an agency, there is not judicially reviewable action under this section or an appeal under paragraph (2) of this subsection;

(B) the 120th day following the filing of an appeal with the Board under subsection (a)(1) of this section, there is no judicially reviewable action (unless such action is not as the result of the filing of a petition by the employee under subsection (b)(1) of this section); or

(C) the 180th day following the filing of a petition with the Equal Employment Opportunity Commission under subsection (b)(1) of this title,[1] there is no final agency action under subsection (b), (c), or (d) of this section;

an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), or section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(d)).[2]

(2) If, at any time after the 120th day following the filing of any matter described in subsection (a)(2) of this section with an agency, there is no judicially reviewable action, the employee may appeal the matter to the Board under subsection (a)(1) of this section.

(3) Nothing in this section shall be construed to affect the right to trial de novo under any provision of law described in subsection (a)(1) of this section after a judicially reviewable action, including the decision of an agency under subsection (a)(2) of this section.

(f) In any case in which an employee is required to file any action, appeal, or petition under this section and the employee timely files the action, appeal, or petition with an

[1] So in original. Probably should be "section".

[2] So in original. Probably should be "(29 U.S.C. 216(b))".

agency other than the agency with which the action, appeal, or petition is to be filed, the employee shall be treated as having timely filed the action, appeal, or petition as of the date it is filed with the proper agency.

(Added Pub. L. 95–454, title II, § 205, Oct. 13, 1978, 92 Stat. 1140.)

REFERENCES IN TEXT

The civil service law, referred to in subsec. (c)(2), is set out in this title. See, particularly, section 3301 et seq. of this title. The General Schedule, referred to in subsec. (d)(6)(B), is set out under section 5332 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7121, 7701, 7703 of this title.

§ 7703. Judicial review of decisions of the Merit Systems Protection Board

(a)(1) Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision.

(2) The Board shall be the named respondent in any proceeding brought pursuant to this subsection, unless the employee or applicant for employment seeks review of a final order or decision issued by the Board under section 7701. In review of a final order or decision issued under section 7701, the agency responsible for taking the action appealed to the Board shall be the named respondent.

(b)(1) Except as provided in paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the Court of Claims or a United States court of appeals as provided in chapters 91 and 158, respectively, of title 28. Notwithstanding any other provision of law, any petition for review must be filed within 30 days after the date the petitioner received notice of the final order or decision of the Board.

(2) Cases of discrimination subject to the provisions of section 7702 of this title shall be filed under section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), and section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)), as applicable. Notwithstanding any other provision of law, any such case filed under any such section must be filed within 30 days after the date the individual filing the case received notice of the judicially reviewable action under such section 7702.

(c) In any case filed in the United States Court of Claims or a United States court of appeals, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) obtained without procedures required by law, rule, or regulation having been followed; or

(3) unsupported by substantial evidence;

except that in the case of discrimination brought under any section referred to in subsection (b)(2) of this section, the employee or applicant shall have the right to have the facts subject to trial de novo by the reviewing court.

(d) The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the District of Columbia if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

(Added Pub. L. 95–454, title II, § 205, Oct. 13, 1978, 92 Stat. 1143.)

REFERENCES IN TEXT

The civil service law, referred to in subsec. (d), is set out in this title. See, particularly, section 3301 et seq. of this title; title 28 section 2342.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7121 of this title.

Subpart G—Insurance and Annuities

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 4703 of this title.

CHAPTER 81—COMPENSATION FOR WORK INJURIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3111, 5948 of this title; title 10 section 7086; title 16 sections 565a–2, 1703; title 30 section 922; title 38 sections 1685, 4107, 4118.

SUBCHAPTER I—GENERALLY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2105, 3373, 3374, 3582, 5595, 8191, 8192, 8332, 8337, 8705, 8706, 8714a, 8901 of this title; title 2 section 31b–5; title 7 section 1507; title 14 section 760; title 15 section 637;

title 16 sections 1a–6, 18i, 558c, 580j, 742f, 831b; title 18 sections 292, 1920, 1922, title 22 sections 889, 1079d, 1079o, 1081; title 25 section 450i; title 29 sections 938, 995; title 33 sections 941, 947; title 38 sections 106, 416, 417; title 39 section 1005; title 40 section 290; title 42 sections 251, 1654, 1701, 1702, 1706, 1856c, 2996d, 5055; title 50 App. sections 1291, 1292, 2004.

§ 8101. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3373, 3374, 7902, 8110, 8118, 8133, 8191, 8192 of this title; title 16 sections 1a–6, 18i, 558c, 742f; title 22 section 2679a; title 29 sections 938, 995; title 30 section 902; title 42 sections 3796b, 5055.

§ 8113. Increase or decrease of basic compensation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8101, 8143 of this title; title 18 section 1921; title 29 section 938; title 42 section 5055.

§ 8122. Time for making claim

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8118, 8121 of this title.

§ 8143. Job Corps enrollees; volunteers in service to America

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 926.

§ 8147. Employees' Compensation Fund

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 sections 1701, 1704, 1705.

§ 8151. Civil service retention rights

[*See main edition for text of* (a)]

(b) Under regulations issued by the Office of Personnel Management—

[*See main edition for text of* (1) *and* (2)]

(As amended Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SUBCHAPTER III—LAW ENFORCEMENT OFFICERS NOT EMPLOYED BY THE UNITED STATES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 16 section 742*l*.

CHAPTER 83—RETIREMENT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3374, 5362, 5948 of this title; title 25 section 450i; title 38 sections 4107, 4109, 4118; title 39 section 1005; title 42 section 2996d.

SUBCHAPTER II—FORFEITURE OF ANNUITIES AND RETIRED PAY

§ 8311. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5531, 8312, 8313, 8314, 8315 of this title.

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1308, 3373, 3374, 5581, 5595, 6303, 8103, 8116, 8501, 8701, 8901 of this title; title 2 sections 31b-5, 60e-3, 72a; title 7 section 331; title 10 sections 1450, 1452; title 11 section 68; title 12 sections 1723a, 2227; title 14 sections 433, 434; title 16 section 1168; title 22 sections 889, 1065, 1071, 2025; title 26 section 3121; title 28 sections 332, 611, 625, 627, 634, 797; title 31 section 43; title 38 section 4202; title 40 section 13b; title 42 sections 212, 410, 415, 417, 1395s, 4276; title 50 App. section 1291.

§ 8331. Definitions

For the purpose of this subchapter—

(1) "employee" means—

[*See main edition for text of* (A) *to* (J)]

but does not include—

[*See main edition for text of* (i) *and* (ii)]

(iii) an employee or group of employees in or under an Executive agency excluded by the Office of Personnel Management under section 8347(g) of this title;

(iv) an individual or group of individuals employed by the government of the District of Columbia excluded by the Office under section 8347(h) of this title;

[*See main edition for text of* (v) *to* (ix), *closing par.; (2) to (16)*]

(17) "normal cost" means the entry-age normal cost computed by the Office of Personnel Management in accordance with generally accepted actuarial practice and expressed as a level percentage of aggregate basic pay;

[*See main edition for text of* (18) *and* (19)]

(20) "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this paragraph, "detention" includes the duties of—

[*See main edition for text of* (A) *to* (D)]

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniformed

Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Office) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation;

(21) "firefighter" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position; and

(22) "bankruptcy judge" means an indivdual appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act adding this paragraph—

(A) who is serving as a United States bankruptcy judge on March 31, 1984, and that has agreed by filing a notice of such agreement with the President, the Senate, and the Director of the Administrative Office of the United States Courts, to accept an appointment as a judge of a United States bankruptcy court established under section 201 of this Act but that is not appointed by the President as a judge of such court; or

(B) whose service as a United States bankruptcy judge during the transition period is terminated by reason of death or disability.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-598, title III, § 338(e), Nov. 6, 1978, 92 Stat. 2681.)

REFERENCES IN TEXT

Section 201 of this Act, referred to in par. (22), is section 201 of Pub. L. 95-598, title II, Nov. 6, 1978, 92 Stat. 2658, which is classified to generally to chapter 6 (§ 151 et seq.) of Title 28, Judiciary and Judicial Procedure.

Section 404(d) of the Act adding this paragraph, referred to in par. (22), is section 404(d) of Pub. L. 95-598, title III, Nov. 6, 1978, 92 Stat. 2785, which is set out in a note preceding section 151 of Title 28.

AMENDMENTS

1978—Par. (1). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

Par. (17). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Par. (20). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

Par. (22). Pub. L. 95-598 added par. (22).

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of the Appendix to Title 11, Bankruptcy.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8332. Creditable service

[See main edition for text of (a)]

(b) The service of an employee shall be credited from the date of original employment to the date of separation on which title to annuity is based in the civilian service of the Government. Credit may not be allowed for a period of separation from the service in excess of 3 calendar days. The service includes—

[See main edition for text of (1) to (9)]

The Office of Personnel Management shall accept the certification of the Secretary of Agriculture or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by paragraph (3) of this subsection. The Office of Personnel Management shall accept the certification of the Capitol Guide Board concerning service for the purpose of this subchapter of the type described in paragraph (8) of this subsection and performed by an employee. For the purpose of paragraph (5) of this subsection—

[See main edition for text of (A), (B) and closing par.; (c) to (i)]

(j) Notwithstanding any other provision of this section, military service, except military service covered by military leave with pay from a civilian position, performed by an individual after December 1956, the period of an individual's services as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, and the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22, shall be excluded in determining the aggregate period of service on which an annuity payable under this subchapter to the individual or to his widow or child is based, if the individual, widow, or child is entitled, or would on proper application be entitled, at the time of that determination, to monthly old-age or survivors benefits under section 402 of title 42 based on the individual's wages and self-employment income. If the military service or service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964 or as a volunteer or volunteer leader under chapter 34 of title 22 is not excluded by the preceding sentence, but on becoming 62 years of age, the individual or widow becomes entitled, or would on proper application be entitled, to the described benefits, the Office of Personnel Management shall redetermine the aggregate period of service on which the annuity is based, effective as of the first day of the month in which he or she becomes 62 years of age, so as to exclude that service. The Secretary of Health, Education, and Welfare, on request of the Office, shall inform the Office whether or not the individual, widow, or child is entitled at any named time to the described benefits. For the purpose of this subsection, the period of an individual's service as a volunteer or volunteer leader, under chapter 34 of title 22 is the period between enrollment as a volunteer or volunteer leader and termination of that service by the President or by death or resignation and the period of an individual's service as a volunteer

under part A of title VIII of the Economic Opportunity Act of 1964 is the period between enrollment as a volunteer and termination of that service by the Director of the Office of Economic Opportunity or by death or resignation.

[*See main edition for text of* (k)]

(*l*)(1) Any employee or Member who—

(A) is of Japanese ancestry; and

(B) while a citizen of the United States or an alien lawfully admitted to the United States for permanent residence, was interned or otherwise detained at any time during World War II in any camp, installation, or other facility in the United States, or in any territory or possession of the United States, under any policy or program of the United States respecting individuals of Japanese ancestry which was established during World War II in the interests of national security pursuant to—

(i) Executive Order Numbered 9066, dated February 19, 1942;

(ii) section 67 of the Act entitled "An Act to provide a government for the Territory of Hawaii", approved April 30, 1900 (chapter 339, Fifty-sixth Congress; 31 Stat. 153);

(iii) Executive Order Numbered 9489, dated October 18, 1944;

(iv) sections 4067 through 4070 of the Revised Statutes of the United States; or

(v) any other statute, rules, regulation, or order;

shall be allowed credit (as civilian service) for any period during which such employee or Member was so interned or otherwise detained after such employee became 18 years of age.

(2) For the purpose of this subsection, "World War II" means the period beginning on December 7, 1941, and ending on December 31, 1946.

(As amended Pub. L. 95-382, § 1(a), Sept. 22, 1978, 92 Stat. 727; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

REFERENCES IN TEXT

Section 67 of the Act entitled "An Act to provide a government for the Territory of Hawaii", approved April 30, 1900 (chapter 339, Fifty-sixth Congress; 31 Stat. 153), referred to in subsec. (*l*)(1)(B)(ii), formerly classified to section 532 of Title 48, Territories and Insular Possessions, was omitted from such Title following the statehood of Hawaii.

Sections 4067 through 4070 of the Revised Statutes, referred to in subsec. (*l*)(1)(B)(iv), are classified to sections 21 through 24 of Title 50, War and National Defense.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission", wherever appearing.

Subsec. (j). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

Subsec. (*l*). Pub. L. 95-382 added subsec.(*l*).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; APPLICABILITY TO ANNUITIES; RECOMPUTATION

Section 2 of Pub. L. 95-382 provided that:

"(a) The amendments made by this Act [amending this section and section 8334 of this title] shall take effect on the later of—

"(1) the date of the enactment of this Act [Sept. 22, 1978], or

"(2) October 1, 1978.

"(b) Subject to subsection (c) of this section, the amendments made by the first section of this Act [amending this section and section 8334 of this title], shall apply with respect to annuities which commence before, on, or after the effective date of this Act, but no monetary benefit by reason of such amendments shall accrue for any period before such effective date.

"(c)(1) An annuity or survivor annuity based on the service of an employee or Member who performed service described in section 8332(l) of title 5, United States Code, as added by the first section of this Act, shall, upon application to the Civil Service Commission, be recomputed in accordance with such section 8332(l).

"(2) Any recomputation of an annuity under paragraph (1) shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received in the Commission.

"(d)(1) The Civil Service Commission shall take such action as may be necessary and and appropriate to inform individuals entitled to have any service credited under section 8332(l) of title 5, United States Code, as added by the first section of this Act, or to have any annuity recomputed under subsection (c), of their entitlement to such credit or recomputation.

"(2) The Civil Service Commission shall, on request, assist any individual referred to in paragraph (1) in obtaining from any department, agency, or other instrumentality of the United States such information possessed by such instrumentality as may be necessary to verify the entitlement of such individual to have any service credited under such section 8332(l) or to have any annuity recomputed under subsection (c).

"(3) Any department, agency, or other instrumentality of the United States which possesses any information with respect to the internment or other detention of any employee or Member as described in such section 8332(l) shall, at the request of the Commission, furnish such information to the Commission."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6303, 8331, 8334, 8339, 8345 of this title; title 22 section 1091; title 25 section 450i; title 26 section 7448; title 38 section 4114.

§ 8334. Deductions, contributions, and deposits

[*See main edition for text of* (a) *and* (b)]

(c) Each employee or Member credited with civilian service after July 31, 1920, for which retirement deductions or deposits have not been made, may deposit with interest an amount equal to the following percentages of his basic pay received for that service:

	Percentage of basic pay	*Service period*
Employee	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	After December 31, 1969.

	Percentage of basic pay	Service period
Member or employee for Congressional employee service.	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7½	After December 31, 1969.
Member for Member service.	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to August 1, 1946.
	6	August 2, 1946, to October 31, 1956.
	7½	November 1, 1956, to December 31, 1969.
	8	After December 31, 1969.
Law enforcement officer for law enforcement service and firefighter for firefighter service..	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to December 31, 1974.
	7½	After December 31, 1974.
Bankruptcy judge	2½	August 1, 1920, to June 30, 1926.
	3½	July 3, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	After January 1, 1970.

[See main edition for text of (d) and (e)]

(f) Under such regulations as the Office of Personnel Management may prescribe, amounts deducted under subsection (a) of this section and deposited under subsections (c) and (d) of this section shall be entered on individual retirement records.

(g) Deposit may not be required for—

(1) service before August 1, 1920;

(2) military service;

(3) service for the Panama Railroad Company before January 1, 1924;

(4) service performed before January 1, 1950, by natives of the Pribilof Islands in the taking and curing of fur seal skins and other activities in connection with the administration of the Pribilof Islands;

(5) days of unused sick leave credited under section 8339(m) of this title; or

(6) any period for which credit is allowed under section 8332(*l*) of this title.

(h) For the purpose of survivor annuity, deposits authorized by subsections (c) and (d) of this section may also be made by the survivor of an employee or Member.

(As amended Pub. L. 95-382, § 1(b), Sept. 22, 1978, 92 Stat. 727; Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-598, title III, § 338(b), Nov. 6, 1978, 92 Stat. 2681.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-598 added bankruptcy judge schedule of deposits.

Subsec. (f). Pub. L. 95-454, substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (g)(6). Pub. L. 95-382 added subsec. (g)(6).

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of the Appendix to Title 11, Bankruptcy.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Amendment by Pub. L. 95-382 effective Oct 1, 1978, and applicable to specified annuities, see section 2 of Pub. L. 95-382, set out as an Effective Date of 1978 Amendment note under section 8332 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8331, 8332, 8333, 8339, 8342, 8344 of this title; title 12 sections 1723a, 2227; title 22 section 889; title 28 sections 611, 627; title 40 section 881.

§ 8335. Mandatory separation

(a) An air traffic controller shall be separated from the service on the last day of the month in which he becomes 56 years of age. The Secretary of Transportation, under such regulations as he may prescribe, may exempt a controller having exceptional skills and experience as a controller from the automatic separation provisions of this subsection until that controller becomes 61 years of age. The Secretary of Transportation shall notify the controller in writing of the date of separation at least 60 days before that date. Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires.

(b) A law enforcement officer or a firefighter who is otherwise eligible for immediate retirement under section 8336(c) of this title shall be separated from the service on the last day of the month in which he becomes 55 years of age or completes 20 years of service if then over that age. The head of the agency, when in his judgment the public interest so requires, may exempt such an employee from automatic separation under this subsection until that employee becomes 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(c) An employee of the Alaska Railroad in Alaska and an employee who is a citizen of the United States employed on the Isthmus of Panama by the Panama Canal Company or the Canal Zone Government, who becomes 62 years of age and completes 15 years of service in Alaska or on the Isthmus of Panama shall be automatically separated from the service. The separation is effective on the last day of the month in which the employee becomes age 62 or completes 15 years of service in Alaska or on the Isthmus of Panama if then over that age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(d) The President, by Executive order, may exempt an employee from automatic separation

under this section when he determines the public interest so requires.

(As amended Pub. L. 95-256, § 5(c), Apr. 6, 1978, 92 Stat. 191.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-256, § 5(c)(1), (2), redesignated former subsec. (f) as (a). Former subsec. (a), relating to mandatory separation when an employee became 70 years of age and completed 15 years of service, was struck out.

Subsec. (b). Pub. L. 95-256, § 5(c)(1),(2), redesignated former subsec. (g) as (b). Former subsec. (b), relating to notice by the employing office of the date of separation, was struck out.

Subsec. (c). Pub. L. 95-256, § 5(c)(1), (3), added subsec. (c). Former subsec. (c), relating to exemption of an employee from automatic separation by the President, was struck out.

Subsec. (d). Pub. L. 95-256, § 5(c)(1), (3), added subsec. (d). Former subsec. (d), relating to inapplicability of automatic separation provisions of this section, was struck out.

Subsec. (e). Pub. L. 95-256, § 5(c)(1), struck out subsec. (e), which related to applicability of provisions to employees of the Alaskan Railroad, Panama Canal Company, and the Canal Zone Government.

Subsecs. (f), (g). Pub. L. 95-256, § 5(c)(2), redesignated former subsecs. (f) and (g) as (a) and (b), respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-256 effective Sept. 30, 1978, see section 5(f) of Pub. L. 95-256, set out as an Effective Date of 1978 Amendment note under section 633a of Title 29, Labor.

§ 8336. Immediate retirement

[See main edition for text of (a) to (c)]

(d) An employee who is separated from the service—

(1) involuntarily, except by removal for cause on charges of misconduct or delinquency; or

(2) voluntarily, during a period when the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function, as determined by the Office of Personnel Management, and the employee is serving in a geographic area designated by the Office;

after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

[See main edition for text of (e) to (g)]

(h) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(i) An annuity or reduced annuity authorized by this section is computed under section 8339 of this title.

(As amended Pub. L. 95-454, title III, § 306, title IV, § 412(a), Oct. 13, 1978, 92 Stat. 1147, 1175.)

AMENDMENTS

1978—Subsec. (d)(2). Pub. L. 95-454, § 306, substituted provisions relating to the employee's agency undergoing a major reorganization, reduction in force, or transfer of function, as determined by the Office of Personnel Management, for provisions relating to the employee's agency undergoing a major reduction in force, as determined by the Commission.

Subsec. (h). Pub. L. 95-454, § 412(a), added subsec. (h). Former subsec. (h) redesignated subsec. (i).

Subsec. (i). Pub. L. 95-454, § 412(a), redesignated subsec. (h) as subsec. (i).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 306 of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Amendment by section 412 of Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3381, 3382, 3396, 8335, 8339 of this title.

§ 8337. Disability retirement

(a) An employee who completes 5 years of civilian service and is found by the Office of Personnel Management to have become disabled shall be retired on his own application or on application by his agency. A Member who completes 5 years of Member service and is found by the Office to have become disabled shall be retired on his own application. An annuity authorized by this section is computed under section 8339 of this title.

(b) A claim may be allowed under this section only if the application is filed with the Office before the employee or Member is separated from the service or within 1 year thereafter. This time limitation may be waived by the Office for an employee or Member who at the date of separation from service or within 1 year thereafter is mentally incompetent, if the application is filed with the Office within 1 year from the date of restoration of the employee or Member to competency or the appointment of a fiduciary, whichever is earlier.

(c) An annuitant receiving disability retirement annuity from the Fund shall be examined under the direction of the Office—

(1) at the end of 1 year from the date of the disability retirement; and

(2) annually thereafter until he becomes 60 years of age;

unless his disability is permanent in character. If the annuitant fails to submit to examination as required by this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

[See main edition for text of (d) to (g)]

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and

"Office" for "Civil Service Commission" and "Commission", respectively.

Subsecs. (b), (c). Pub. L. 95–454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8339. Computation of annuity

[See main edition for text of (a) to (c)]

(d) The annuity of an employee retiring under section 8335(b) or 8336(c) of this title is—

[See main edition for text of (A) and (B); (e)]

(f) The annuity computed under subsections (a)–(e) and (o) of this section may not exceed 80 percent of—

(1) the average pay of the employee; or

(2) the greatest of—

(A) the final basic pay of the Member;

(B) the average pay of the Member; or

(C) the final basic pay of the appointive position of a former Member who elects to have his annuity computed or recomputed under section 8344(d)(1) of this title.

[See main edition for text of (g)]

(h) The annuity computed under subsections (a), (b), and (f) of this section for an employee retiring under section 8336(d) or (h) of this title is reduced by ⅙ of 1 percent for each full month the employee is under 55 years of age at the date of separation. The annuity computed under subsections (c) and (f) of this section for a Member retiring under the second or third sentence of section 8336(g) of this title or the third sentence of section 8338(b) of this title is reduced by 1/12 of 1 percent for each full month not in excess of 60 months, and ⅙ of 1 percent for each full month in excess of 60 months the Member is under 60 years of age at the date of separation.

(i) The annuity computed under subsections (a)–(h) and (o) of this section is reduced by 10 percent of a deposit described by section 8334(c) of this title remaining unpaid, unless the employee or Member elects to eliminate the service involved for the purpose of annuity computation.

(j) The annuity computed under subsections (a)–(i) and (o) of this section for a married employee or Member retiring under this subchapter, or any portion of that annuity designated in writing for the purpose of section 8341(b) of this title by the employee or Member at the time of retirement, is reduced by 2½ percent of so much thereof as does not exceed $3,600 and by 10 percent of so much there of as exceeds $3,600, unless the employee or Member notifies the Office of Personnel Management in writing at the time of retirement that he does not desire any spouse surviving him to receive an annuity under section 8341(b) of this title. An annuity which is reduced under this subsection or any similar prior provision of law shall, for each full month during which a retired employee or Member is not married (or is remarried if there is no election in effect under the following sentence), be recomputed and paid as if the annuity had not been so reduced. Upon remarriage the retired employee or Member may irrevocably elect during such marriage, in a signed writing received in the Office within 1 year after such remarriage, a reduction in his annuity for the purpose of allowing an annuity for his spouse in the event such spouse survives him. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage, and shall be effective the first day of the first month beginning 1 year after the date of remarriage.

(k)(1) At the time of retiring under section 8336 or 8338 of this title, an unmarried employee or Member who is found to be in good health by the Office may elect a reduced annuity instead of an annuity computed under subsections (a)–(i) and (o) of this section and name in writing an indivudal having an insurable interest in the employee or Member to receive an annuity under section 8341(c) of this title after the death of the retired employee or Member. The annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent. An annuity which is reduced under this paragraph or any similar prior provision of law shall, effective the first day of the month following the death of the individual named under this paragraph, be recomputed and paid as if the annuity had not been so reduced.

(2) An employee or Member, who is unmarried at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to his spouse and who later marries, may irrevocably elect, in a signed writing received in the Office within 1 year after he marries, a reduction in his current annuity as provided in subsection (j) of this section. The reduced annuity shall be effective the first day of the first month beginning 1 year after the date of marriage. The election voids prospectively any election previously made under paragraph (1) of this subsection.

(*l*) The annuity computed under subsections (a)–(k) and (o) of this section for an employee who is a citizen of the United States is increased by $36 for each year of service in the employ of—

(1) the Alaska Engineering Commission, or The Alaska Railroad, in Alaska between March 12, 1914, and July 1, 1923; or

(2) the Isthmian Canal Commission, or the Panama Railroad Company, on the Isthmus of Panama between May 4, 1904, and April 1, 1914.

(m) In computing any annuity under subsections (a)–(e) and (o) of this section, the total service of an employee who retires on an immediate annuity or dies leaving a survivor or survivors entitled to annuity includes, without regard to the limitations imposed by subsection (f) of this section, the days of unused sick leave to his credit under a formal leave system, except that these days will not be counted in

determining average pay or annuity eligible under this subchapter. For the purpose of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 of this title under section 6301(2)(x)–(xiii) of this title, the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.

(o)[1] The annuity of an employee who is a bankruptcy judge is computed with respect to service after March 31, 1979 and before April 1, 1984, as a bankruptcy judge and his military service (not exceeding five years) creditable under section 8332 of this title by multiplying 2½ percent of his average annual pay by the years of that service.

(As amended Pub. L. 95–256, § 5(d), Apr. 6, 1978, 92 Stat. 191; Pub. L. 95–317, §§ 1(a), (c), 2, July 10, 1978, 92 Stat. 382; Pub. L. 95–454, title IV, § 412(b), title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1175, 1224; Pub. L. 95–519, § 3, Oct. 25, 1978, 92 Stat. 1819; Pub. L. 95–598, title III, § 338(a), Nov. 6, 1978, 92 Stat. 2681.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95–256 substituted "(b)" for "(g)".

Subsec. (f). Pub. L. 95–598, § 338(a)(1), inserted reference to subsec. (o) of this section.

Subsec. (h). Pub. L. 95–454, § 412(b), substituted "section 8336(d) or (h)" for "section 8336(d)".

Subsec. (i). Pub. L. 95–598, § 338(a)(2), inserted reference to subsec. (o) of this section.

Subsec. (j). Pub. L. 95–598, § 338(a)(3), inserted reference to subsec. (o) of this section.

Pub. L. 95–454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Pub. L. 95–317, § 1(a), added "(or is remarried if there is no election in effect under the following sentence)" following "or Member is not married", and substituted provisions authorizing, upon remarriage, an irrovocable election in a signed writing received by the Commission within 1 year after remarriage for a reduction and computation of such reduction, for provisions authorizing the annuity, upon remarriage, to be reduced by the same percentage reductions in effect at the time of retirement.

Subsec. (k). Pub. L. 95–454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

Subsec. (k)(1). Pub. L. 95–598, § 338(a)(3), inserted reference to subsec. (o) of this section.

Pub. L. 95–317, § 2, added provisions relating to recomputation and payment of an annuity reduced under this par. or any similar prior provision of law.

Subsec. (k)(2). Pub. L. 95–317, § 1(c), substituted "The reduced annuity shall be effective the first day of the first month beginning 1 year after the date of marriage" for "His reduced annuity is effective the first day of the month after his election is received in the Commission".

Subsec. (l). Pub. L. 95–598, § 338(a)(4), inserted reference to subsec. (o) of this section.

Subsec. (m). Pub. L. 95–598, § 338(a)(5), inserted reference to subsec. (o) of this section.

Pub. L. 95–519 added provision relating to the computation of days of unused sick leave for employees excepted from subchapter I of chapter 63 of this title.

Subsec. (o). Pub. L. 95–598, § 338(a)(6), added subsec. (o).

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of the Appendix to Title 11, Bankruptcy.

Amendment by Pub. L. 95–519 applicable only with respect to employees who retire or die on or after Oct. 25, 1978, see section 4(b) of Pub. L. 95–519, set out as an Effective Date of 1978 Amendment note under section 5551 of this title.

Amendment by section 906(a)(2) and (3) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Amendment by section 412(b) of Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

Amendment by Pub. L. 95–256 effective Sept. 30, 1978, see section 5(f) of Pub. L. 95–256, set out as an Effective Date of 1978 Amendment note under section 633a of Title 29, Labor.

EFFECTIVE DATE OF 1978 AMENDMENTS; SURVIVOR ANNUITIES SUBJECT TO REDUCTION, ETC.

Section 4 of Pub. L. 95–317 provided that:

"(a) This act [amending this section and section 8341(b)(1) of this title and enacting provisions set out as notes under this section] shall take effect—

(1) the first day of the first month which begins on or after the date of the enactment of this Act [July 10, 1978], or

(2) October 1, 1978,

whichever is later.

"(b) Except as provided under subsection (c) of this section, the amendments made by the first section and section 2 of this Act, [amending subsecs. (j) and (k) of this section and section 8341(b)(1) of this title] shall apply with respect to annuities which commence before, on, or after the effective date of this Act, but no monetary benefit by reason of such amendments shall accrue for any period before such effective date.

"(c) The amendments made by the first section of this Act, [amending subsecs. (j) and (k)(2) of this section and section 8341(b)(1) of this title] shall not affect the eligibility of any individual to a survivor annuity under section 8341(b) of title 5, United States Code, or the reduction therefor under section 8339(j) of such title, in the case of an annuitant who remarried before the effective date of this Act, unless the annuitant notifies the Civil Service Commission in a signed writing received in the Commission within one year after the effective date of this Act that such annuitant does not desire the spouse of the annuitant to receive a survivor annuity in the event of the annuitant's death. Such notification shall take effect the first day of the first month after it is received in the Commission."

ANNUAL NOTICE BY COMMISSION TO ANNUITANT OF RIGHTS OF ELECTION UNDER SUBSECS. (j) AND (k)(2) OF THIS SECTION

Section 3 of Pub. L. 95–317 provided that: "The Civil Service Commission shall, on an annual basis, inform each annuitant of such annuitant's rights of election under sections 8339(j) and 8339(k)(2) of title 5, United States Code."

§ 8340. Cost-of-living adjustment of annuities

(a) Effective December 1, 1965, each annuity payable from the Fund having a commencing date before December 2, 1965, is increased by—

(1) the percent rise in the price index, adjusted to the nearest ⅒ of 1 percent, determined by the Office of Personnel Management on the basis of the annual average price index for calendar year 1962 and the price index for the base month of July 1965; plus

[1] So in original. There is no subsec. (n).

[See main edition for text of (2) and closing par.]

(b)(1) The Office shall—

[See main edition for text of (A), (B) and (2); (c) to (f)]

(As amended Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

Subsec. (a)(1). Pub. L. 95–454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b)(1). Pub. L. 95–454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8341, 8348 of this title; title 22 section 1121; title 31 section 43c.

§ 8341. Survivor annuities

(a) For the purpose of this section—

[See main edition for text of (1) and (2)]

(3) "child" means—

[See main edition for text of (A) to (C)]

For the purpose of this paragraph and subsection (e) of this section, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if he shows to the satisfaction of the Office of Personnel Management that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(b)(1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a spouse to whom he was married at the time of retirement, or by a widow or widower whom he married after retirement, the spouse, widow, or widower is entitled to an annuity equal to 55 percent, or 50 percent if retired before October 11, 1962, of an annuity computed under section 8339(a)–(i) and (o) of this title as may apply with respect to the annuitant, or of such portion thereof as may have been designated for this purpose under section 8339(j) of this title, unless the employee or Member has notified the Office in writing at the time of retirement that he does not desire any spouse surviving him to receive his annuity, or in the case of remarriage, he did not file an election under the third sentence of section 8339(j) of this title.

[See main edition for text of (2) and (3); (c)]

(d) If an employee or Member dies after completing at least 18 months of civilian service, his widow or widower is entitled to an annuity equal to 55 percent of an annuity computed under section 8339(a)–(f), (i), and (o) of this title as may apply with respect to the employee or Member, except that, in the computation of the annuity under such section, the annuity of the employee or Member shall be at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under such section after increasing his service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age.

The annuity of the widow or widower commences on the day after the employee or Member dies. This annuity and the right there to terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) remarries before becoming 60 years of age.

[See main edition for text of (e)]

(f) If a Member heretofore or hereafter separated from the service with title to deferred annuity from the Fund hereafter dies before having established a valid claim for annuity and is survived by a spouse to whom married at the date of separation, the surviving spouse—

(1) is entitled to an annuity equal to 55 percent of the deferred annuity of the Member commencing on the day after the Member dies and terminating on the last day of the month before the surviving spouse dies or remarries; or

(2) may elect to receive the lump-sum credit instead of annuity if the spouse is the individual who would be entitled to the lump-sum credit and files application therefor with the Office before the award of the annuity.

(g) In the case of a surviving spouse whose annuity under this section is terminated because of remarriage before becoming 60 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if—

[See main edition for text of (1) and (2)]

(As amended Pub. L. 95–317, § 1(b), July 10, 1978, 92 Stat. 382; Pub. L. 95–318, § 2, July 10, 1978, 92 Stat. 384; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95–598, title III, § 338(c), Nov. 6, 1978, 92 Stat. 2681.)

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95–454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b)(1). Pub. L. 95–598, § 338(c)(1), inserted reference to subsec. (o) of section 8339 of this title.

Pub. L. 95–454, § 906(a)(3), substituted "Office" for "Commission".

Pub. L. 95–317 added provisions relating to failure to file an election under section 8339(j) of this title in the case of remarriage.

Subsec. (d). Pub. L. 95-598, § 338(c)(2), inserted reference to subsec. (o) of section 8339 of this title.

Subsec. (f)(2). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

Subsec. (g). Pub. L. 95-318 struck out "after July 18, 1966," following "terminated".

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of the Appendix to Title II, Bankruptcy.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Section 3 of Pub. L. 95-318 provided that: "The foregoing provisions of this Act [amending subsec. (g) of this section and enacting provisions set out as notes under this section] shall take effect on—

"(1) the first day of the month following the date of the enactment of this Act [July 10, 1978], or

"(2) October 1, 1978,

whichever date is later."

EFFECTIVE DATE OF 1978 AMENDMENT; SURVIVOR ANNUITIES SUBJECT TO REDUCTION, ETC.

Amendment by Pub. L. 95-317 effective the first day of the first month which begins on or after the date of the enactment of Pub. L. 95-317, which was approved July 10, 1978, or Oct. 1, 1978, whichever is later, and provisions respecting eligibility of an individual to a survivor annuity, or the reduction therefor, see section 4 of Pub. L. 95-317, set out as a note under section 8339 of this title.

RESTORATION OF SURVIVOR ANNUITIES FOR CERTAIN WIDOWS AND WIDOWERS REMARRYING BEFORE JULY 18, 1966, AND WHERE MEMBER DIED BEFORE JANUARY 8, 1971

Section 1 of Pub. L. 95-318, eff. Oct. 1, 1978, provided that:

"(a) Upon application to the Civil Service Commission, the annuity of—

"(1) a surviving spouse of an employee which was terminated under the provisions of section 8341 (b) or (d) of title 5, United States Code, or of any prior applicable law, because of the remarriage of such spouse before July 18, 1966, and

"(2) a surviving spouse of a Member who died before January 8, 1971, which was terminated under any such provision, because of the remarriage of such spouse,

shall be restored in accordance with the provisions of subsection (b) of this section.

"(b)(1) In the case of a remarriage occurring after the surviving spouse became sixty years of age, the annuity shall be restored to such spouse under subsection (a) of this section only if any lump sum paid on termination of the annuity is returned to the Civil Service Retirement and Disability Fund. If such amount is paid, the annuity shall be so restored commencing on the effective date of this section at the rate which would have been in effect if the annuity had not been terminated.

"(2) In the case of a remarriage occurring before the surviving spouse became sixty years of age, the annuity shall be restored to such spouse under subsection (a) of this section only if—

"(A) such spouse elects to receive this annuity instead of a survivor benefit to which the spouse may be entitled under subchapter III of chapter 83 of such title 5 or under another retirement system for Government employees by reason of the marriage; and

"(B) any lump sum paid on termination of the annuity is returned to such fund.

If the requirements of the preceding sentence are satisfied, such annuity shall be so restored commencing on the effective date of this section or on the first day of the month following the date the remarriage is dissolved by death, annulment, or divorce, whichever date is later, at the rate which was in effect when the annuity was terminated."

§ 8342. Lump-sum benefits; designation of beneficiary; order of precedence

(a) An employee or Member who is separated from the service, or is transferred to a position in which he does not continue subject to this subchapter, is entitled to be paid the lump-sum credit if his separation or transfer occurs and application for payment is filed with the Office of Personnel Management at least 31 days before the earliest commencing date of any annuity for which he is eligible. The receipt of payment of the lump-sum credit by the individual voids all annuity rights under this subchapter, until he is reemployed in the service subject to this subchapter. This subsection also applies to an employee or Member separated before October 1, 1956, after completing at least 20 years of civilian service.

(b) Under regulations prescribed by the Office, a present or former employee or Member may designate a beneficiary or beneficiaries for the purpose of this subchapter.

(c) Lump-sum benefits authorized by subsections (d)–(f) of this section shall be paid to the person or persons surviving the employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other person:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before his death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

[See main edition for text of pars. Second to Fifth]

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of his death.

For the purpose of this subsection, "child" includes a natural child and an adopted child, but does not include a stepchild.

[See main edition for text of (d) to (f)]

(g) Annuity accrued and unpaid on the termination, except by death, of the annuity of an annuitant or survivor annuitant shall be paid to that individual. Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

First, to the duly appointed executor or administrator of the estate of the survivor annuitant.

Second, if there is no executor or administrator, payment may be made, after 30 days from the date of death of the survivor annu-

itant, to such next of kin of the survivor annuitant as the Office determines to be entitled under the laws of the domicile of the survivor annuitant at the date of his death.

[*See main edition for text of (h) and (i)*]

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsecs. (b), (c), (g). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8343. Additional annuities; voluntary contributions

(a) Under regulations prescribed by the Office of Personnel Management, an employee or Member may voluntarily contribute additional sums in multiples of $25, but the total may not exceed 10 percent of his basic pay for creditable service after July 31, 1920. The voluntary contribution account in each case is the sum of unrefunded contributions, plus interest at 3 percent a year compounded annually to—

[*See main edition for text of (1) and (2); (b) and (c)*]

(d) A present or former employee or Member is entitled to be paid the voluntary contribution account if he files application for payment with the Office before receiving an additional annuity. An individual who has been paid the voluntary contribution account may not again deposit additional sums under this section until, after a separation from the service of more than 3 calendar days, he again becomes subject to this subchapter.

[*See main edition for text of (e)*]

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (d). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8344. Annuities and pay on reemployment

(a) If an annuitant receiving annuity from the Fund, except—

[*See main edition for text of (1) to (4)*]

becomes employed in an appointive or elective position, his service on and after the date he is so employed is covered by this subchapter. Deductions for the Fund may not be withheld from his pay. An amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5551 of this title. The amounts so deducted shall be deposited in the Treasury of the United States to the credit of the Fund. If the annuitant serves on a full-time basis, except as President, for at least 1 year, on a part-time basis for periods equivalent to at least 1 year of full-time service, in employment not excluding him from coverage under section 8331(1) (i) or (ii) of this title—

(A) his annuity on termination of employment is increased by an annuity computed under section 8339 (a), (b), (d), (e), (h), (i), and (o) of this title as may apply based on the period of employment and the basic pay, before deduction, averaged during that employment; and

(B) his lump-sum credit may not be reduced by annuity paid during that employment.

If the annuitant is receiving a reduced annuity as provided in section 8339(j) or section 8339(k)(2) of this title, the increase in annuity payable under subparagraph (A) of this subsection is reduced by 10 percent and the survivor annuity payable under section 8341(b) of this title is increased by 55 percent of the increase in annuity payable under such subparagraph (A), unless, at the time of claiming the increase payable under such subparagraph (A), the annuitant notifies the Office of Personnel Management in writing that he does not desire the survivor annuity to be increased. If the annuitant dies while still reemployed, the survivor annuity payable is increased as though the reemployment had otherwise terminated. If the described employment of the annuitant continues for at least 5 years, or the equivalent of 5 years in the case of part-time employment, he may elect, instead of the benefit provided by subparagraph (A) of this subsection, to deposit in the Fund an amount computed under section 8334(c) of this title covering that employment and have his rights redetermined under this subchapter. If the annuitant dies while still reemployed and the described employment had continued for at least 5 years, or the equivalent of 5 years in the case of part-time employment, the person entitled to survivor annuity under section 8341(b) of this title may elect to deposit in the Fund and have his rights redetermined under this subchapter.

[*See main edition for text of (b) to (e)*]

(As amended Pub. L. 95-454, title IX, § 906(a)(14), Oct. 13, 1978, 92 Stat. 1226; Pub. L. 95-598, title III, § 338(d), Nov. 6, 1978, 92 Stat. 2681.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-598 inserted reference to subsec. (o) of section 8339 of this title in par. (A).

Pub. L. 95-454 substituted "Office of Personnel Management" for "Commission" in the provisions following par. (B).

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Ef-

fective Date note preceding section 101 of the Appendix to Title 11, Bankruptcy.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8339 of this title; title 11 section 68; title 22 sections 2512, 2584; title 28 sections 625, 634.

§ 8345. Payment of benefits; commencement, termination, and waiver of annuity

[See main edition for text of (a) to (c)]

(d) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by a waiver signed and filed with the Office of Personnel Management. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(e) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

[See main edition for text of (f)]

(g) The Office shall prescribe regulations to provide that the amount of any monthly annuity payable under this section accuring for any month and which is computed with regard to service that includes any service referred to in section 8332(b)(6) performed by an individual prior to January 1, 1969, shall be reduced by the portion of any benefits under any State retirement system to which such individual is entitled (or on proper application would be entitled) for such month which is attributable to such service performed by such individual before such date.

(h) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from his annuity for such purposes as the Office of Personnel Management in its sole discretion considers appropriate.

(i)(1) No payment shall be made from the Fund unless an application for benefits based on the service of an employee or Member is received in the Office of Personnel Management before the one hundred and fifteenth anniversary of his birth.

(2) Notwithstanding paragraph (1) of this subsection, after the death of an employee, Member, or annuitant, no benefit based on his service shall be paid from the Fund unless an application therefor is received in the Office of Personnel Management within 30 years after the death or other event which gives rise to title to the benefit.

(j)(1) Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based upon his service shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall only apply to payments made by the Office under this subchapter after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may prescribe.

(3) As used in this subsection, "court" means any court of any State or the District of Columbia.

(As amended Pub. L. 95-366, § 1(a), Sept. 15, 1978, 92 Stat. 600; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (e). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

Subsec. (g). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" in the subsec. (g) added by Pub. L. 94-126.

Pub. L. 95-366 redesignated as subsec. (h) the subsec. (g) added by Pub. L. 94-166.

Subsec. (h). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Pub. L. 95-366 redesignated former subsec. (g), added by Pub. L. 94-166, as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission" wherever appearing.

Pub. L. 95-366 redesignated former subsec. (h) as (i).

Subsec. (j). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

Pub. L. 95-366 added subsec. (j).

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Section 2 of Pub. L. 95-366 provided that: "The amendments made by the first section of this Act [amending this section and section 8346 of this title] shall only apply to payments made from the Civil Service Retirement and Disability Fund after the date of the enactment of this Act [Sept. 15, 1978]."

§ 8346. Exemption from legal process; recovery of payments

(a) The money mentioned by this subchapter is not assignable, either in law or equity, except under the provisions of subsections (h) and (j) of section 8345 of this title, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws.

(b) Recovery of payments under this subchapter may not be made from an individual when, in the judgment of the Office of Person-

nel Management, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money mentioned by this subchapter on account of a certification or payment made by a former employee of the United States in the discharge of his official duties may be made only if the head of the agency on behalf of which the certification or payment was made certifies to the Office that the certification or payment involved fraud on the part of the former employee.

(As amended Pub. L. 95-366, § 1(b), Sept. 15, 1978, 92 Stat. 600; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-366 substituted references to subsecs. (h) and (j) of section 8345 for reference to subsec. (g) of section 8345.

Subsec. (b). Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Amendment by Pub. L. 95-366 applicable to payments made from the Civil Service Retirement and Disability Fund after Sept. 15, 1978, see section 2 of Pub. L. 95-366, set out as an Effective Date of 1978 Amendment note under section 8345 of this title.

CROSS REFERENCES

Enforcement of legal obligations to provide child support or make alimony payments, see section 659 of Title 42, The Public Health and Welfare.

§ 8347. Administration; regulations

(a) The Office of Personnel Management shall administer this subchapter. Except as otherwise specifically provided herein, the Office shall perform, or cause to be performed, such acts and prescribe such regulations as are necessary and proper to carry out this subchapter.

(b) Applications under this subchapter shall be in such form as the Office prescribes. Agencies shall support the applications by such certificates as the Office considers necessary to the determination of the rights of applicants. The Office shall adjudicate all claims under this subchapter.

(c) The Office shall determine questions of disability and dependency arising under this subchapter. The decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time such medical or other examinations as it considers necessary to determine the facts concerning disability or dependency of an individual receiving or applying for annuity under this subchapter. The Office may suspend or deny annuity for failure to submit to examination.

(d) An administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(e) The Office shall fix the fees for examinations made under this subchapter by physicians or surgeons who are not medical officers of the United States. The fees and reasonable traveling and other expenses incurred in connection with the examinations are paid from appropriations for the cost of administering this subchapter.

(f) The Office shall select three actuaries, to be known as the Board of Actuaries of the Civil Service Retirement System. The Office shall fix the pay of the members of the Board, except members otherwise in the employ of the United States. The Board shall report annually on the actuarial status of the System and furnish its advice and opinion on matters referred to it by the Office. The Board may recommend to the Office and to Congress such changes as in the Board's judgment are necessary to protect the public interest and maintain the System on a sound financial basis. The Office shall keep, or cause to be kept, such records as it considers necessary for making periodic actuarial valuations of the System. The Board shall make actuarial valuations every 5 years, or oftener if considered necessary by the Office.

(g) The Office may exclude from the operation of this subchapter an employee or group of employees in or under an Executive agency whose employment is temporary or intermittent. However, the Office may not exclude any employee who occupies a position on a part-time career employment basis (as defined in section 3401(2) of this title).

(h) The Office, on recommendation by the Commissioner of the District of Columbia, may exclude from the operation of this subchapter an individual or group of individuals employed by the government of the District of Columbia whose employment is temporary or intermittent.

[See main edition for text of (i) to (l)]

(As amended Pub. L. 95-437, § 4(a), Oct. 10, 1978, 92 Stat. 1058; Pub. L. 95-454, title IX, § 906(a)(2), (3), (9), (c)(2)(F), Oct. 13, 1978, 92 Stat. 1224, 1225, 1227.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsecs. (b), (c). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

Subsec. (d). Pub. L. 95-454, § 906(a)(9), substituted "Merit Systems Protection Board" for "Commission", and "Board" for "Commission".

Subsecs. (e), (f). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

Subsec. (g). Pub. L. 95-454, § 906(a)(3), (c)(2)(F), substituted "Office" for "Commission" wherever appearing, and "3401" for "3391".

Pub. L. 95-437 added provision prohibiting the Commission from excluding any employee who occupies a position on a part-time career employment basis, as defined in section 3391(2) of this title.

Subsec. (h). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out

as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8348. Civil Service Retirement and Disability Fund

(a) There is a Civil Service Retirement and Disability Fund. The Fund—

(1) is appropriated for the payment of—

(A) benefits as provided by this subchapter; and

(B) administrative expenses incurred by the Office of Personnel Management in placing in effect each annuity adjustment granted under section 8340 of this title; and

(2) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Office in connection with the administration of this chapter and other retirement and annuity statutes.

[See main edition for text of (b) to (f)]

(g) At the end of each fiscal year, the Office shall notify the Secretary of the Treasury of the amount equivalent to (1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and (2) that portion of disbursement for annuities for that year which the Office estimates is attributable to credit allowed for military service. Before closing the accounts for each fiscal year, the Secretary shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the following percentages of such amounts; 10 percent for 1971; 20 percent for 1972; 30 percent for 1973; 40 percent for 1974; 50 percent for 1975; 60 percent for 1976; 70 percent for 1977; 80 percent for 1978; 90 percent for 1979; and 100 percent for 1980 and for each fiscal year thereafter. The Office shall report to the President and to the Congress the sums credited to the Fund under this subsection.

(h)(1) Notwithstanding any other statute, the United States Postal Service shall be liable for that portion of any estimated increase in the unfunded liability of the Fund which is attributable to any benefits payable from the Fund to active and retired Postal Service officers and employees, and to their survivors, when the increase results from an employee-management agreement under title 39, or any administrative action by the Postal Service taken pursuant to law, which authorizes increases in pay on which benefits are computed.

(2) The estimated increase in the unfunded liability, referred to in paragraph (1) of this subsection, shall be determined by the Office of Personnel Management. The United States Postal Service shall pay the amount so determined to the Office in 30 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System, with the first payment thereof due at the end of the fiscal year in which an increase in pay becomes effective.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

Amendments

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsec. (g). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission", wherever appearing.

Subsec. (h)(2). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Section Referred to in Other Sections

This section is referred to in section 8331 of this title; title 20 section 125; title 25 section 450i; title 39 section 1005.

CHAPTER 85—UNEMPLOYMENT COMPENSATION

SUBCHAPTER I—EMPLOYEES GENERALLY

§ 8501. Definitions

For the purpose of this subchapter—

(1) "Federal service" means service performed after 1952 in the employ of the United States or an instrumentality of the United States which is wholly or partially owned by the United States, but does not include service (except service to which subchapter II of this chapter applies) performed—

[See main edition for text of (A) to (D)]

(E) by an individual excluded by regulations of the Office of Personnel Management from the operation of subchapter III of chapter 83 of this title because he is paid on a contract or fee basis;

[See main edition for text of (F) to (L); (2) to (8)]

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

Amendments

1978—Par. (1)(E). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

CHAPTER 87—LIFE INSURANCE

Chapter Referred to in Other Sections

This chapter is referred to in sections 1103, 1308, 3373, 3374, 3582, 5362, 5948 of this title; title 2 sections 31b-5, 72a; title 20 section 125; title 22 section 2025; title 25 section 450i; title 28 sections 332, 627, 634; title 38 sections 4107, 4118; title 39 section 1005; title 42 sections 2996d, 4276.

§ 8701. Definition

(a) For the purpose of this chapter, "employee" means—

[See main edition for text of (1) to (9)]

but does not include—

[See main edition for text of (A) and (B)]

(C) an employee excluded by regulation of the Office of Personnel Management under section 8716(b) of this title.

[See main edition for text of (b)]

(As amended Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a)(C). Pub. L. 95–454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8702. Automatic coverage

(a) An employee is automatically insured on the date he becomes eligible for insurance and each policy of insurance purchased by the Office of Personnel Management under this chapter shall provide for that automatic coverage.

(b) An employee desiring not to be insured shall give written notice to his employing office on a form prescribed by the Office. If the notice is received before he has become insured, he shall not be insured. If the notice is received after he has become insured, his insurance stops at the end of the pay period in which the notice is received.

(As amended Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b). Pub. L. 95–454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8703. Benefit certificate

The Office of Personnel Management shall arrange to have each insured employee receive a certificate setting forth the benefits to which he is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting him. The certificate is issued instead of the certificate which the insurance company would otherwise be required to issue.

(As amended Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95–454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8704. Group insurance; amounts

[See main edition for text of (a)]

(b) Subject to the conditions and limitations approved by the Office of Personnel Management which are contained in the policy purchased by the Office, the group accidental death and dismemberment insurance provides payment as follows:

Loss	*Amount payable*
For loss of life	Full amount shown in the schedule in subsection (a) of this section.
Loss of one hand or of one foot or loss of sight of one eye.	One-half the amount shown in the schedule in subsection (a) of this section.
Loss of two or more such members.	Full amount shown in the schedule in subsection (a) of this section.

For any one accident the aggregate amount of group accidental death and dismemberment insurance that may be paid may not exceed the amount shown in the schedule in subsection (a) of this section.

(c) The Office shall prescribe regulations providing for the conversion of other than annual rates of pay to annual rates of pay and shall specify the types of pay included in annual pay. For the purpose of this chapter, "annual pay" includes premium pay under section 5545(c)(1) of this title.

(d) In determining the amount of insurance to which an employee is entitled—

(1) a change in rate of pay under subchapter VI of chapter 53 of this title is deemed effective as of the first day of the pay period after the pay period in which the payroll change is approved; and

[See main edition for text of (2)]

(As amended Pub. L. 95–454, title VIII, § 801(a)(3)(E), title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1222, 1224.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsec. (c). Pub. L. 95–454, § 906(a)(3), substituted "Office" for "Commission".

Subsec. (d)(1). Pub. L. 95–454, § 801(a)(3)(E), substituted "subchapter VI of chapter 53" for "section 5337".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 801(a)(3)(E) of Pub. L. 95–454 effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 906(a)(2) and (3) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8705. Death claims; order of precedence; escheat

(a) The amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office or, if insured because of receipt of annuity or of benefits under subchapter I of chapter 81 of this title as provided by section 8706(b) of this title, in the Office of Personnel Management. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

[See main edition for text of pars. Second to Sixth; (b)]

(c) If, within 2 years after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by subsection (a) of this section, and neither the Office nor the administrative office established by the company concerned pursuant to section 8709(b) of this title has received notice that such a claim will be made, payment may be made to the claimant who in the judgment of the Office is equitably entitled thereto, and the payment bars recovery by any other person.

[See main edition for text of (d)]

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-583, § 1(b), Nov. 2, 1978, 92 Stat. 2481.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-583 struck out reference to "or (c)" following "section 8706(b)".

Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (c). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-583 effective Nov. 2, 1978, see section 3 of Pub. L. 95-583, set out as an Effective Date of 1978 Amendment note under section 8706 of this title.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8706. Termination of insurance

(a) A policy purchased under this chapter shall contain a provision, approved by the Office of Personnel Management, to the effect that insurance of an employee stops on his separation from the service or 12 months after discontinuance of his pay, whichever is earlier, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office.

(b)(1) If on the date the insurance would otherwise stop the employee retires on an immediate annuity and has been insured under this chapter throughout—

(A) the 5 years of service immediately preceding such date, or

(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

life insurance only may be continued, without cost to the employee, under conditions determined by the Office.

(2) If on the date the insurance would otherwise stop the employee is receiving compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this chapter throughout—

(A) the 5 years of service immediately preceding such date, or

(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

life insurance only may be continued, without cost to the employee, under conditions determined by the Office, during the period the employee is receiving compensation for work injuries and is held by the Secretary of Labor or his delegate to be unable to return to duty.

(3) The amount of life insurance continued under paragraph (1) or paragraph (2) of this subsection shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving such compensation for disease or injury. The Office shall prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.

(c) The insurance granted to an employee stops, except for a 31-day extension of life insurance coverage, on the day immediately before his entry on active duty or active duty for training unless the period of duty is covered by military leave with pay. The insurance does not stop during a period of inactive duty training. For the purpose of this subsection, the terms "active duty", "active duty for training", and "inactive duty training" have the meanings given them by section 101 of title 38.

(d) Notwithstanding subsections (a) and (b) of this section, an employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8701(a) of this title, within 60 days after entering on that leave without pay, may elect to continue his insurance and arrange to pay currently into the Employees' Life Insurance Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the premium payments to the Fund. If the employee does not so elect, his insurance will continue during nonpay status and stop as provided by subsection (a) of this section.

(e) If the insurance of an employee stops because of separation from the service or suspension without pay, and the separation or suspension is thereafter officially found to have been erroneous, the employee is deemed to have been insured during the period of erroneous separation or suspension. Deductions otherwise required by section 8707 of this chapter shall

not be withheld from any backpay awarded for the period of separation or suspension unless death or accidental dismemberment of the employee occurs during such period.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-583, § 1(a), Nov. 2, 1978, 92 Stat. 2481.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsec. (b). Pub. L. 95-583, § 1(a)(1), added subsec. (b) and deleted prior subsec. (b) which read:

"If on the date the insurance would otherwise stop the employee retires on an immediate annuity and—

"(1) his retirement is for disability; or

"(2) he has completed 12 years of creditable service as determined by the Commission;

his life insurance only may be continued, without cost to him, under conditions determined by the Commission. Periods of honorable, active service in the armed forces shall be credited toward the required 12 years if the employee has completed at least 5 years of civilian service. The amount of life insurance continued under this subsection shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age or retires, whichever is later. The Commission may prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced."

Pub. L. 95-454, § 902(a)(3), which substituted "Office" for "Commission", was executed to the text of subsec. (b) as amended by Pub. L. 95-583. See Effective Date of 1978 Amendments note below.

Subsec. (c). Pub. L. 95-583, § 1(a)(1), (2), struck out provisions reading: "If on the date the insurance would otherwise stop the employee is receiving benefits under subchapter I of chapter 81 of this title because of disease or injury to himself, his life insurance only may be continued, without cost to him, under conditions determined by the Commission while he is receiving the benefits and is held by the Department of Labor to be unable to return to duty." and redesignated former subsec. (d) as (c).

Subsec. (d). Pub. L. 95-583, § 1(a)(2), (3), redesignated former subsec. (e) as (d) and substituted reference to "subsections (a) and (b) of this section" for "subsections (a)-(c) of this section". Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 95-583, § 1(a)(2), redesignated former subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 95-583, § 1(a)(2), redesignated former subsec. (f) as (e).

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 3 of Pub. L. 95-583 provided that: "The amendments [of sections 8705, 8706, 8714a and 8901 of this title] by this Act shall take effect on the date of the enactment [Nov. 2, 1978] of this Act."

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8707. Employee deductions; withholding

During each period in which an employee is insured under a policy of insurance purchased by the Office of Personnel Management under section 8709 of this title, there shall be withheld from the pay of the employee his share of the cost of the group life insurance and accidental death and dismemberment insurance. The amount withheld shall be at the rate, adjusted to the nearest half-cent, of 66⅔ percent of the level cost of each $1,000 of insurance, as determined by the Office.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8708. Government contributions

(a) For each period in which an employee is insured under a policy of insurance purchased by the Office of Personnel Management under section 8709 of this title, a sum equal to one-half the amount which is withheld from the pay of the employee under section 8707 of this title shall be contributed from the appropriation or fund which is used to pay him.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8709. Insurance policies

(a) The Office of Personnel Management, without regard to section 5 of title 41, may purchase from one or more life insurance companies a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by this chapter. A company must meet the following requirements:

(1) It must be licensed to transact life and accidental death and dismemberment insurance under the laws of 48 of the States and the District of Columbia.

(2) It must have in effect, on the most recent December 31 for which information is available to the Office, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

(b) A company issuing a policy under subsection (a) of this section shall establish an administrative office under a name approved by the Office.

(c) The Office at any time may discontinue a policy purchased from a company under subsection (a) of this section.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission".

Subsecs. (b), (c). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8710. Reinsurance

(a) The Office of Personnel Management shall arrange with a company issuing a policy under this chapter for the reinsurance, under conditions approved by the Office, of portions of the total amount of insurance under the policy, determined under this section, with other life insurance companies which elect to participate in the reinsurance.

(b) The Office shall determine for and in advance of a policy year which companies are eligible to participate as reinsurers and the amount of insurance under a policy which is to be allocated to the issuing company and to reinsurers. The Office shall make this determination at least every 3 years and when a participating company withdraws.

(c) The Office shall establish a formula under which the amount of insurance retained by an issuing company after ceding reinsurance, and the amount of reinsurance ceded to each reinsurer, is in proportion to the total amount of each company's group life insurance, excluding insurance purchased under this chapter, in force in the United States on the determination date, which is the most recent December 31 for which information is available to the Office. In determining the proportions, the portion of a company's group life insurance in force on the determination date in excess of $100,000,000 shall be reduced by—

(1) 25 percent of the first $100,000,000 of the excess;

(2) 50 percent of the second $100,000,000 of the excess;

(3) 75 percent of the third $100,000,000 of the excess; and

(4) 95 percent of the remaining excess.

However, the amount retained by or ceded to a company may not exceed 25 percent of the amount of the company's total life insurance in force in the United States on the determination date.

[*See main edition for text of (d)*]

(e) An issuing company or reinsurer is entitled, as a minimum, to be allocated an amount of insurance under the policy equal to any reduction from December 31, 1953, to the determination date, in the amount of the company's group life insurance under policies issued to associations of employees of the United States. However, any increase under this subsection in the amount allocated is reduced by the amount in force on the determination date of any policy covering life insurance agreements assumed by the Office.

(f) The Office may modify the computations under this section as necessary to carry out the intent of this section.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsecs. (b), (c), (e), (f). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8711. Basic tables of premium rates

(a) A policy purchased under this chapter shall include, for the first policy year, basic tables of premium rates as follows:

(1) For group life insurance, a schedule of basic premium rates by age which the Office of Personnel Management determines to be consistent with the lowest schedule of basic premium rates generally charged for new group life insurance policies issued to large employers.

(2) For group accidental death and dismemberment insurance, a basic premium rate which the Office determines is consistent with the lowest rate generally charged for new group accidental death and dismemberment policies issued to large employers.

The schedule for group life insurance, except as otherwise provided by this section, shall be applied to the distribution by age of the amounts of group life insurance under the policy at its date of issuance to determine an average basic premium rate per $1,000 of life insurance.

(b) The policy shall provide that the basic premium rates determined for the first policy year continue for later policy years except as readjusted for a later year based on experience under the policy. The company issuing the policy may make the readjustment on a basis that the Office determines in advance of the policy year is consistent with the general practice of life insurance companies under policies of group life and group accidental death and dismemberment insurance issued to large employers.

(c) The policy shall provide that if the Office determines that ascertaining the actual age distribution of the amounts of group life insurance in force at the date of issue of the policy or at the end of the first or any later year of insurance thereunder would not be possible except at a disproportionately high expense, the Office may approve the determination of a tentative average group life premium rate, for the first or any later policy year, instead of using the actual age distribution. The Office, on request by the company issuing the policy,

shall redetermine the tentative average premium rate during any policy year, if experience indicates that the assumptions made in determining that rate were incorrect for that year.

(d) The policy shall stipulate the maximum expense and risk charges for the first policy year. The Office shall determine these charges on a basis consistent with the general level of charges made by life insurance companies under policies of group life and accidental death and dismemberment insurance issued to large employers. The maximum charges continue from year to year, except that the Office may redetermine them for any year either by agreement with the company issuing the policy or on written notice given to the company at least 1 year before the beginning of the year for which the redetermined maximum charges will be effective.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsecs. (b) to (d). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8712. Annual accounting; special contingency reserve

A policy purchased under this chapter shall provide for an accounting to the Office of Personnel Management not later than 90 days after the end of each policy year. The accounting shall set forth, in a form approved by the Office—

[*See main edition for text of (1) to (3)*]

An excess of the total of paragraph (1) of this section over the sum of paragraphs (2) and (3) of this section shall be held by the company issuing the policy as a special contingency reserve to be used by the company only for charges under the policy. The reserve shall bear interest at a rate determined in advance of each policy year by the company and approved by the Office as being consistent with the rate generally used by the company for similar funds held under other group life insurance policies. When the Office determines that the special contingency reserve has attained an amount estimated by it to make satisfactory provision for adverse fluctuations in future charges under the policy, any further excess shall be deposited in the Treasury of the United States to the credit of the Employees' Life Insurance Fund. When a policy is discontinued, any balance remaining in the special contingency reserve after all charges have been made shall be deposited in the Treasury to the credit of the Fund. The company may make the deposit in equal monthly installments over a period of not more than 2 years.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8713. Advisory committee

[(a) Repealed. Pub. L. 90-83, § 1(93)(B), Sept. 11, 1967, 81 Stat. 219.]

(b) The Director of the Office of Personnel Management shall appoint a committee composed of five employees insured under this chapter, who serve without additional pay, to advise the Office regarding matters of concern to employees under this chapter.

(As amended Pub. L. 95-454, title IX, § 906(a)(1), (4), Oct. 13, 1978, 92 Stat. 1224, 1225.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-454 substituted "Director of the Office of Personnel Management" for "Chairman of the Civil Service Commission", and "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8714. Employees' Life Insurance Fund

(a) The amounts withheld from employees under section 8707 of this title and the sums contributed from appropriations and funds under section 8708 of this title shall be deposited in the Treasury of the United States to the credit of the Employees' Life Insurance Fund. The Fund is available without fiscal year limitation for—

(1) premium payments under an insurance policy purchased under this chapter; and

(2) expenses incurred by the Office of Personnel Management in the administration of this chapter within the limitations that may be specified annually by appropriation acts.

[*See main edition for text of (b)*]

(As amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8714a. Optional insurance

(a) Under the conditions, directives, and terms specified in sections 8709-8712 of this

title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each insured employee equal amounts of optional life insurance and accidental death and dismemberment insurance in addition to the amounts provided in section 8704(a) of this title.

(b) The optional life insurance and accidental death and dismemberment insurance shall be made available to each insured employee under such conditions as the Office shall prescribe and in amounts approved by the Office but not more than the greater of $10,000 or an amount which, when added to the amount provided in section 8704(a) of this title, makes the sum of his insurance equal to his annual pay.

(c)(1) The optional insurance on an employee stops on his separation from service, 12 months after discontinuance of his pay, or on his entry on active duty or active duty for training, as provided in sections 8706(a) and 8706(c) of this title.

(2)(A) In the case of any employee who retires on an immediate annuity and has been insured under this section throughout—

(i) the 5 years of service immediately preceding the date of such retirement, or

(ii) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

the amount of optional life insurance only which has been in force throughout such period may be continued, under conditions determined by the Office.

(B) In the case of any employee who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this section throughout—

(i) the 5 years of service immediately preceding the date such employee becomes entitled to such compensation, or

(ii) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

the amount of optional life insurance only which has been in force throughout such period may be continued, under conditions determined by the Office, during the period the employee is receiving such compensation for disease or injury and is held by the Secretary of Labor or his delegate to be unable to return to duty.

(C) The amount of optional life insurance continued under subparagraph (A) or subparagraph (B) of this paragraph shall be subject to the same monthly reductions as required for regular life insurance under section 8706(b)(3) of this title.

(d) During each period in which an employee has the optional insurance the full cost thereof shall be withheld from his pay. During each period in which an employee continues optional life insurance after retirement or while in receipt of compensation for work injuries, as provided in section 8706(b) of this title, the full cost thereof shall be withheld from his annuity or compensation, except that, at the end of the calendar month in which he becomes 65 years of age, the optional life insurance shall be without cost to him. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for separately from amounts withheld and contributed under sections 8707 and 8708 of this title.

(e) The cost of the optional insurance shall be determined from time to time by the Office on the basis of such age groups as it considers appropriate.

[See main edition for text of (f)]

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-583, § 1(c), Nov. 2, 1978, 92 Stat. 2481.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

Subsec. (c)(1). Pub. L. 95-583, § 1(c)(1), substituted reference to section "8706(c)" for "8706(d)".

Subsec. (c)(2). Pub. L. 95-583, § 1(c)(2), added par. (2) and deleted prior par. (2) which read:

"So much of the optional life insurance in force on an employee on the date he retires on an immediate annuity or becomes entitled to receive compensation for work injuries which has been in force for not less than—

"(A) the full period or periods of service during which the optional insurance was available to him; or

"(B) the 12 years of service immediately preceding his retirement or beginning date of entitlement to compensation for work injuries and during which the optional insurance was available to him;

whichever is shorter, may be continued—

"(A) after retirement, under the same conditions (except with respect to cost but including reduction of the amount continued) as provided in section 8706(b) of this title; or

"(B) while in receipt of compensation for work injuries under the same conditions (except with respect to cost) as provided in section 8706(c) of this title."

Pub. L. 95-454, § 906(a)(3), which substituted "Office" for "Commission", was executed to the text of subsec. (c)(2) as amended by Pub. L. 95-583. See Effective Date of 1978 Amendments note below.

Subsec. (d). Pub. L. 95-583, § 1(c)(3), struck out reference to "or 8706(c)" following "section 8706(b)".

Subsec. (e). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-583 effective Nov. 2, 1978, see section 3 of Pub. L. 95-583, set out as an Effective Date of 1978 Amendments note under section 8706 of this title.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8716. Regulations

(a) The Office of Personnel Management may prescribe regulations necessary to carry out the purposes of this chapter.

(b) The regulations of the Office may prescribe the time at which and the conditions under which an employee is eligible for coverage under this chapter. The Office, after con-

sulting the head of the agency or other employing authority concerned, may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointment, seasonal, intermittent employment, and employment of like nature. The Office may not exclude—

(1) an employee or group of employees solely on the basis of the hazardous nature of employment;

(2) a teacher in the employ of the Board of Education of the District of Columbia, whose pay is fixed by section 1501 of title 31, District of Columbia Code, on the basis of the fact that the teacher is serving under a temporary appointment if the teacher has been so employed by the Board for a period or periods totaling not less than two school years; or

(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title).

[*See main edition for text of* (c)]

(As amended Pub. L. 95-437, § 4(b), Oct. 10, 1978, 92 Stat. 1058; Pub. L. 95-454, title IX, § 906(a)(2), (3), (c)(2)(F), (G), Oct. 13, 1978, 92 Stat. 1224, 1227.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

Pub. L. 95-437 substituted "intermittent employment" for "intermittent or part-time employment" in provision preceding par. (1), and added par. (3).

Pub. L. 95-454, § 906(c)(2)(F), (G), substituted "3401" for "3391" in par. (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

CHAPTER 89—HEALTH INSURANCE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1308, 3373, 3374, 3582 of this title; title 2 sections 31b-5, 72a; title 25 section 450i; title 28 sections 332, 627, 634; title 39 section 1005; title 42 sections 300e-1, 300e-6, 426a, 1395y, 2996d.

§ 8901. Definitions

For the purpose of this chapter—

(1) "employee" means—

[*See main edition for text of* (A) *to* (H)]

but does not include—

[*See main edition for text of* (i) *to* (iii)]

(iv) an employee excluded by regulation of the Office of Personnel Management under section 8913(b) of this title;

[*See main edition for text of* (2)]

(3) "annuitant" means—

(A) an employee who retires on an immediate annuity under subchapter III of chapter 83 of this title or another retirement system for employees of the Government, after 5 or more years of service or for disability;

[*See main edition for text of* (B) *to* (D); (4) *to* (7)]

(8) "employee organization" means an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under this chapter, and which, after December 31, 1978, and before January 1, 1980, applied to the Office for approval of a plan provided under section 8903(3) of this title.

(As amended Pub. L. 95-368, § 2, Sept. 17, 1978, 92 Stat. 606; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-583, § 2, Nov. 2, 1978, 92 Stat. 2482.)

AMENDMENTS

1978—Par. (1)(iv). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Par. (3)(A). Pub. L. 95-583 reduced period of service to 5 from 12 years.

Par. (8). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

Pub. L. 95-368 substituted "after December 31, 1978, and before January 1, 1980" for "before January 1, 1964".

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-583 effective Nov. 2, 1978, see section 3 of Pub. L. 95-583, set out as an Effective Date of 1978 Amendments note under section 8706 of this title.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8902. Contracting authority

(a) The Office of Personnel Management may contract with qualified carriers offering plans described by section 8903 of this title, without regard to section 5 of title 41 or other statute requiring competitive bidding. Each contract shall be for a uniform term of at least 1 year, but may be made automatically renewable from term to term in the absence of notice of termination by either party.

[*See main edition for text of* (b)]

(c) A contract for a plan described by section 8903(1) or (2) of this title shall require the carrier—

(1) to reinsure with other companies which elect to participate, under an equitable formula based on the total amount of their group health insurance benefit payments in the United States during the latest year for which the information is available, to be determined by the carrier and approved by the Office; or

(2) to allocate its rights and obligations under the contract among its affiliates which elect to participate, under an equitable formula to be determined by the carrier and the affiliates and approved by the Office.

(d) Each contract under this chapter shall contain a detailed statement of benefits offered and shall include such maximums, limitations, exclusions, and other definitions of benefits as the Office considers necessary or desirable.

(e) The Office may prescribe reasonable minimum standards for health benefits plans described by section 8903 of this title and for carriers offering the plans. Approval of a plan may be withdrawn only after notice and opportunity for hearing to the carrier concerned without regard to subchapter II of chapter 5 and chapter 7 of this title. The Office may terminate the contract of a carrier effective at the end of the contract term, if the Office finds that at no time during the preceding two contract terms did the carrier have 300 or more employees and annuitants, exclusive of family members, enrolled in the plan.

[*See main edition for text of (f) to (h)*]

(i) Rates charged under health benefits plans described by section 8903 of this title shall reasonably and equitably reflect the cost of the benefits provided. Rates under health benefits plans described by section 8903(1) and (2) of this title shall be determined on a basis which, in the judgment of the Office, is consistent with the lowest schedule of basic rates generally charged for new group health benefit plans issued to large employers. The rates determined for the first contract term shall be continued for later contract terms, except that they may be readjusted for any later term, based on past experience and benefit adjustments under the later contract. Any readjustment in rates shall be made in advance of the contract term in which they will apply and on a basis which, in the judgment of the Office, is consistent with the general practice of carriers which issue group health benefit plans to large employers.

(j) Each contract under this chapter shall require the carrier to agree to pay for or provide a health service or supply in an individual case if the Office finds that the employee, annuitant, or family member is entitled thereto under the terms of the contract.

[*See main edition for text of (k)*]

(*l*) The Office shall contract under this chapter for a plan described in section 8903(4) of this title with any qualified health maintenance carrier which offers such a plan. For the purpose of this subsection, "qualified health maintenance carrier" means any qualified carrier which is a qualified health maintenance organization within the meaning of section 1310(d)(1) of title XIII of the Public Health Service Act (42 U.S.C. 300c-9(d)).

(m)(1) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to health insurance or plans to the extent that such law or regulation is inconsistent with such contractual provisions.

(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, if a contract under this chapter provides for the provision of, the payment for, or the reimbursement of the cost of health services for the care and treatment of any particular health condition, the carrier shall provide, pay, or reimburse up to the limits of its contract for any such health service properly provided by any person licensed under State law to provide such service if such service is provided to an individual covered by such contract who is a member of a medically underserved population (within the meaning of section 1302(7) of the Public Health Service Act (42 U.S.C. 300e-17)).[1]

(B) The provisions of subparagraph (A) shall not apply to contracts entered into providing prepayment plans described in section 8903(4) of this title.

(As amended Pub. L. 95-368, § 1, Sept. 17, 1978, 92 Stat. 606; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsecs. (c) to (e), (i), (j), (*l*). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

Subsec. (m). Pub. L. 95-368 added subsec. (m).

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Section 3 of Pub. L. 95-368 provided that: "The provisions of section 8902(m)(2) of title 5, United States Code, as added by the first section of this Act, shall apply to services provided under any contract entered into or renewed after December 31, 1979; except that such provisions shall not apply to services provided after December 31, 1984."

§ 8903. Health benefits plans

The Office of Personnel Management may contract for or approve the following health benefits plans:

[*See main edition for text of (1) to (3)*]

(4) COMPREHENSIVE MEDICAL PLANS.—

[*See main edition for text of (A)*]

(B) INDIVIDUAL-PRACTICE PREPAYMENT PLANS.—Individual-practice prepayment plans which offer health services in whole or substantial part on a prepaid basis, with professional services thereunder provided by individual physicians who agree, under certain conditions approved by the Office, to accept the payments provided by the plans as full payment for covered services given by them including, in addition to in-hospital services, general care given in their offices and the patients' homes, out-of-hospital diagnostic procedures, and preventive care, and which plans are offered by organizations which have successfully operated similar plans before approval by the Office of the plan in which employees may enroll.

[1] So in original. Probably should be "(42 U.S.C. 300e-1(7))".

(As amended Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Pub. L. 95–454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8905. Election of coverage

[*See main edition for text of* (a)]

(b) An annuitant who at the time he becomes an annuitant was enrolled in a health benefits plan under this chapter—

(1) as an employee for a period of not less than—

(A) the 5 years of service immediately before retirement;

(B) the full period or periods of service between the last day of the first period, as prescribed by regulations of the Office of Personnel Management, in which he is eligible to enroll in the plan and the date on which he becomes an annuitant; or

(C) the full period or periods of service beginning with the enrollment which became effective before January 1, 1965, and ending with the date on which he becomes an annuitant;

whichever is shortest; or

(2) as a member of the family of an employee or annuitant;

may continue his enrollment under the conditions of eligibility prescribed by regulations of the Office.

[*See main edition for text of* (c)]

(d) An employee or annuitant enrolled in a health benefits plan under this chapter may change his coverage or that of himself and members of his family by an application filed within 60 days after a change in family status or at other times and under conditions prescribed by regulations of the Office.

(e) An employee or annuitant may transfer his enrollment from a health benefits plan described by section 8903 of this title to another plan described by that section at the times and under the conditions prescribed by regulations of the Office.

(As amended Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–454, § 906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsecs. (d), (e). Pub. L. 95–454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8906. Contributions

(a) The Office of Personnel Management shall determine the average of the subscription charges in effect on the beginning date of each contract year with respect to self alone or self and family enrollments under this chapter, as applicable, for the highest level of benefits offered by—

(1) the service benefit plan;

(2) the indemnity benefit plan;

(3) the two employee organization plans with the largest number of enrollments, as determined by the Office.

(4) the two comprehensive medical plans with the largest number of enrollments, as determined by the Office.

(b)(1) Except as provided by paragraphs (2) and (3) of this subsection, the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter shall be adjusted, beginning on the first day of the first applicable pay period of each year, to an amount equal to the following percentage, as applicable, of the average subscription charge determined under subsection (a) of this section: 50 percent for applicable pay periods commencing in 1974 and 60 percent for applicable pay periods commencing in 1975 and in each year thereafter.

[*See main edition for text of* (2)]

(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee's regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Office)[1]

[*See main edition for text of* (c) *and* (d)]

(e)(1) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Office. The regulations may provide for the waiving of contributions by the employee and the Government.

[*See main edition for text of* (2); (f) *and* (g)]

(h) The Office shall provide for conversion of biweekly rates of contribution specified by this section to rates for employees and annuitants paid on other than a biweekly basis, and for this purpose may provide for the adjustment of the converted rate to the nearest cent.

(As amended Pub. L. 95–437, § 4(c)(2)(A), Oct. 10, 1978, 92 Stat. 1059; Pub. L. 95–454, title IX,

[1] So in original. Subsec. (b)(3) enacted without a final period.

§ 906(a)(15), (c)(2)(F), Oct. 13, 1978, 92 Stat. 1226, 1227.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 906(a)(15), substituted "Office of Personnel Management" for "Commission" in introductory material, and "Office" for "Commission" in cls. (3) and (4).

Subsec. (b)(1). Pub. L. 95–437, § 4(c)(2)(A)(i) substituted "paragraphs (2) and (3)" for "paragraph (2)".

Subsec. (b)(3). Pub. L. 95–454, § 906(a)(15), (c)(2)(F), substituted "Office" for "Commission", and "3401" for "3391".

Pub. L. 95–437, § 4(c)(2)(A)(ii) added subsec. (b)(3).

Subsec. (e)(1). Pub. L. 95–454, § 906(a)(15), substituted "Office" for "Commission".

Subsec. (h). Pub. L. 95–454, § 906(a)(15), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

EMPLOYEES SERVING ON PART-TIME CAREER EMPLOYMENT BASIS ON OCTOBER 10, 1978

Section 4(c)(2)(B) provided that: "The amendments made by subparagraph (A) [amending subsec. (b) (1) and (3) of this section] shall not apply with respect to any employee serving in a position on a part-time career employment basis on the date of the enactment of this Act [Oct. 10, 1978] for such period as the employee continues to serve without a break in service in that or any other position on such part-time basis."

§ 8907. Information to employees

(a) The Office of Personnel Management shall make available to each employee eligible to enroll in a health benefits plan under this chapter such information, in a form acceptable to the Office after consultation with the carrier, as may be necessary to enable the employee to exercise an informed choice among the types of plans described by section 8903 of this title.

[*See main edition for text of* (b)]

(As amended Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8908. Coverage of restored employees and survivor annuitants

[*See main edition for text of* (a)]

(b) A surviving spouse whose survivor annuity under this title was terminated because of remarriage and is later restored may, under such regulations as the Office of Personnel Management may prescribe, enroll in a health benefits plan described by section 8903 of this title if such spouse was covered by any such plan immediately before such annuity was terminated.

(As amended Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–454 substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8909. Employees Health Benefits Fund

(a) There is in the Treasury of the United States an Employees Health Benefits Fund which is administered by the Office of Personnel Management. The contributions of employees, annuitants, and the Government described by section 8906 of this title shall be paid into the Fund. The Fund is available—

(1) without fiscal year limitation for all payments to approved health benefits plans; and

(2) to pay expenses for administering this chapter within the limitations that may be specified annually by Congress.

(b) Portions of the contributions made by employees, annuitants, and the Government shall be regularly set aside in the Fund as follows:

(1) A percentage, not to exceed 1 percent of all contributions, determined by the Office to be reasonably adequate to pay the administrative expenses made available by subsection (a) of this section.

(2) For each health benefits plan, a percentage, not to exceed 3 percent of the contributions toward the plan, determined by the Office to be reasonably adequate to provide a contingency reserve.

The Office, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves of the plans then under contract with the Office. When funds are so transferred, each contingency reserve shall be credited in proportion to the total amount of the subscription charges paid and accrued to the plan for the contract term immediately before the contract term in which the transfer is made. The income derived from dividends, rate adjustments, or other refunds made by a plan shall be credited to its contingency reserve. The contingency reserves may be used to defray increases in future rates, or may be applied to reduce the contributions of employees and the Government to, or to increase the benefits provided by, the plan from which the reserves are derived, as the Office from time to time shall determine.

[*See main edition for text of* (c) *to* (e)]

(As amended Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b). Pub. L. 95–454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out

as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8910. Studies, reports, and audits

(a) The Office of Personnel Management shall make a continuing study of the operation and administration of this chapter, including surveys and reports on health benefits plans available to employees and on the experience of the plans.

(b) Each contract entered into under section 8902 of this title shall contain provisions requiring carriers to—

(1) furnish such reasonable reports as the Office determines to be necessary to enable it to carry out its functions under this chapter; and

(2) permit the Office and representatives of the General Accounting Office to examine records of the carriers as may be necessary to carry out the purposes of this chapter.

(c) Each Government agency shall keep such records, make such certifications, and furnish the Office with such information and reports as may be necessary to enable the Office to carry out its functions under this chapter.

(As amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsecs. (b), (c). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8911. Advisory committee

The Director of the Office of Personnel Management shall appoint a committee composed of five members, who serve without pay, to advise the Office regarding matters of concern to employees under this chapter. Each member of the committee shall be an employee enrolled under this chapter or an elected official of an employee organization.

(As amended Pub. L. 95-454, title IX, § 906(a)(1), (4), Oct. 13, 1978, 92 Stat. 1224, 1225.)

AMENDMENTS

1978—Pub. L. 95-454 substituted "Director of the Office of Personnel Management" for "Chairman of the Civil Service Commission", and "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 8913. Regulations

(a) The Office of Personnel Management may prescribe regulations necessary to carry out this chapter.

(b) The regulations of the Office may prescribe the time at which and the manner and conditions under which an employee is eligible to enroll in an approved health benefits plan described in section 8903 of this title. The regulations may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointment, seasonal or intermittent employment, and employment of like nature. The Office may not exclude—

(1) an employee or group of employees solely on the basis of the hazardous nature of employment;

(2) a teacher in the employ of the Board of Education of the District of Columbia, whose pay is fixed by section 1501 of title 31, District of Columbia Code, on the basis of the fact that the teacher is serving under a temporary appointment if the teacher has been so employed by the Board for a period or periods totaling not less than two school years; or

(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title).

(c) The regulations of the Office shall provide for the beginning and ending dates of coverage of employees and annuitants and members of their families under health benefit plans. The regulations may permit the coverage to continue, exclusive of the temporary extension of coverage described by section 8902(g) of this title, until the end of the pay period in which an employee is separated from the service, or until the end of the month in which an annuitant ceases to be entitled to annuity, and in case of the death of an employee or annuitant, may permit a temporary extension of the coverage of members of his family for not to exceed 90 days.

[*See main edition for text of (d)*]

(As amended Pub. L. 95-437, § 4(c)(1), Oct. 10, 1978, 92 Stat. 1058; Pub. L. 95-454, title IX, § 906(a)(2), (3), (c)(2)(F), (H), Oct. 13, 1978, 92 Stat. 1224, 1227.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission" wherever appearing.

Pub. L. 95-437 added par. (3).

Subsec. (b)(3). Pub. L. 95-454, § 906(c)(2)(F), (H), substituted "3401" for "3391".

Subsec. (c). Pub. L. 95-454, § 906(a)(3), substituted "Office" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

TITLE 5—APPENDIX

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FEDERAL ADVISORY COMMITTEE ACT

Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended by Pub. L. 94–409, § 5(c), Sept. 13, 1976, 90 Stat. 1247

§ 1. Short title

ACT REFERRED TO IN OTHER SECTIONS

This Act is referred to in title 7 sections 2284, 2289; title 12 section 1428a; title 15 sections 78k–1, 776; title 16 sections 463, 470q, 541g, 1533, 1612, 1826; title 19 section 2155; title 29 section 1302; title 42 sections 242n, 300j–5, 300k–3, 300v–3, 5816, 6007, 6708, 6838, 7234; title 43 sections 1739, 1753; title 49 section 1903; title 50 App. sections 2158, 2158a, 2169.

§ 2. Findings and purpose

EXECUTIVE ORDER NO. 11769

Ex. Ord. No. 11769, Feb. 21, 1974, 39 F.R. 7125, set out as a note under this section in the main edition, which related to committee management, was revoked by Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out as a note below.

EX. ORD. NO. 12024. TRANSFER OF CERTAIN ADVISORY COMMITTEE FUNCTIONS

Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), Section 301 of Title 3 of the United States Code, Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), and Section 7 of Reorganization Plan No. 1 of 1977 (42 F.R. 56101 (October 21, 1977)) [set out in this Appendix], and as President of the United States of America, in accord with the transfer of advisory committee functions from the Office of Management and Budget to the General Services Administration provided by Reorganization Plan No. 1 of 1977, it is hereby ordered as follows:

SECTION 1. The transfer, provided by Section 5F of Reorganization Plan No. 1 of 1977 (42 FR 56101) [set out in this Appendix], of certain functions under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), from the Office of Management and Budget and its Director to the Administrator of General Services is hereby effective.

SEC. 2. There is hereby delegated to the Administrator of General Services all the functions vested in the President by the Federal Advisory Committee Act, as amended, except that, the annual report to the Congress required by Section 6(c) of that Act shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

SEC. 3. The Director of the Office of Management and Budget shall take all actions necessary or appropriate to effectuate the transfer of functions provided in this Order, including the transfer of funds, personnel and positions, assets, liabilities, contracts, property, records, and other items related to the functions transferred.

SEC. 4. Executive Order No. 11769 of February 21, 1974 is hereby revoked.

SEC. 5. Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred or reassigned as provided in this Order from the Office of Management and Budget to the Administrator of General Services, shall remain in effect as if issued by the Administrator until amended, modified, or revoked.

SEC. 6. This Order shall be effective November 20, 1977.

JIMMY CARTER.

§ 7. Responsibilities of the Director, Office of Management and Budget; Committee Management Secretariat, establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations

TRANSFER OF FUNCTIONS

All functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat were transferred to the Administrator of General Services by Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, effective on or before Apr. 1, 1978, at such time as specified by the President.

§ 9. Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 2286, 2289.

§ 10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2287; title 19 section 2155; title 20 section 1233h; title 42 section 6273; title 50 App. section 2158a.

§ 11. Availability of transcripts; "agency proceeding"

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 19 section 2155; title 42 section 6273; title 50 App. section 2158a.

§ 14. Termination of advisory committees; renewal; continuation

EXECUTIVE ORDER No. 11948

Ex. Ord. No. 11948, Dec. 20, 1976 , 41 F.R. 55705, as amended by Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839; Ex. Ord. No. 12029, Dec. 14, 1977, 42 F.R. 63631, set out as a note under this section in the main Edition, which provided for the continuance of certain federal advisory committees, was superseded by Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note below.

EX. ORD. NO. 12007. TERMINATION OF CERTAIN PRESIDENTIAL ADVISORY COMMITTEES

Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate certain advisory committees in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), it is hereby ordered as follows:

SECTION 1. (a) The Citizens' Advisory Council on the Status of Women is terminated.

(b) Executive Order No. 11126 of November 1, 1963, as amended by Executive Order No. 11221 of May 6, 1965 [set out as a note under section 2000e of Title 42, The Public Health and Welfare], is further amended as follows:

(1) Subsection (5) of Section 102 is revoked.

(2) Section 103, in order to delete a reference to the Council, is amended to read as follows:

"Annually the Committee shall transmit a report to the President concerning the status of women."

(3) Part II is revoked.

(4) The second sentence of Section 301, in order to delete references to the Council, is amended to read as follows:

"To the extent practical and to the extent permitted by law (1) all Executive agencies shall cooperate with the Committee and furnish it such information and assistance as may be necessary for the performance of its functions, and (2) the Secretary of Labor shall furnish staff, office space, office facilities and supplies, and other necessary assistance, facilities, and services for the Committee."

SEC. 2. (a) The Citizens' Advisory Committee on Environmental Quality is terminated.

(b) Part II of Executive Order No. 11472 of May 29, 1969, as amended by paragraphs (7) and (8) of Section 4 of Executive Order No. 11514 of March 5, 1970 [set out as a note under Section 4321 of Title 42, The Public Health and Welfare], is revoked.

SEC. 3. (a) The Advisory Council for Minority Enterprise is terminated.

(b) Section 2 of Executive Order No. 11625 of October 13, 1971 [set out as a note under section 631 of Title 15, Commerce and Trade]; is revoked.

SEC. 4. (a) The Consumer Advisory Council is terminated.

(b) Executive Order No. 11583 of February 24, 1971 [set out as a note under Section 887d of Title 20, Education], is amended as follows:

(1) The second sentence of subsection (b)(1) of Section 2 is amended by deleting "(including the Consumer Advisory Council established in section 5 of this order)".

(2) Section 5 is revoked.

SEC. 5. (a) The President's Advisory Board on International Investment is terminated.

(b) Executive Order No. 11962 of January 19, 1977 [set out as a note under section 3107 of Title 22, Foreign Relations and Intercourse], is revoked.

SEC. 6. Subsections (a), (g), (i), and (j) of Section 1 of Executive Order No. 11948 of December 20, 1976 [set out as a note under this section], which extended the above advisory committees until December 31, 1978, is superseded.

JIMMY CARTER.

EX. ORD. NO. 12029. TERMINATION OF A PRESIDENTIAL ADVISORY COMMITTEE

Ex. Ord. No. 12029, Dec. 14, 1977, 42 F.R. 63631, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate an advisory committee in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), it is hereby ordered as follows:

SECTION 1. (a) The Quetico-Superior Committee is terminated.

(b) Executive Order No. 11342, as amended, is revoked.

SEC. 2. Subsection (e) of Section 1 of Executive Order No. 11948 of December 20, 1976 [set out as a note under this section], which extended the above advisory committee until December 31, 1978, is superseded.

JIMMY CARTER.

EX. ORD. NO. 12110. CONTINUANCE OF CERTAIN FEDERAL ADVISORY COMMITTEES

Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

1-101. Each advisory committee listed below is continued until December 31, 1980.

(a) Committee for the Preservation of the White House—Executive Order No. 11145, as amended (Department of the Interior) [set out as a note under section 110 of Title 3, The President].

(b) President's Commission on White House Fellowships—Executive Order No. 11183, as amended (United States Civil Service Commission).

(c) President's Committee on the National Medal of Science—Executive Order No. 11287, as amended (National Science Foundation) [set out as a note under section 1881 of Title 42, The Public Health and Welfare].

(d) President's Council on Physical Fitness and Sports—Executive Order No. 11562, as amended (Department of Health, Education, and Welfare).

(e) President's Export Council—Executive Order No. 11753 of December 20, 1973 (Department of Commerce) [set out as a note under section 2401 of Title 50, Appendix, War and National Defense].

(f) President's Committee on Mental Retardation—Executive Order No. 11776 of March 28, 1974 (Department of Health, Education, and Welfare) [set out as a note preceeding section 6001 of Title 42, The Public Health and Welfare].

(g) Federal Advisory Council on Occupational Safety and Health—Executive Order No. 11807 of September 28, 1974 (Department of Labor) [set out as a note under section 7902 of this title].

(h) Presidential Advisory Board on Ambassadorial Appointments, Executive Order No. 11970 of February 5, 1977 (Department of State) [set out as a note under section 901 of Title 22, Foreign Relations and Intercourse].

(i) Committee on Selection of Federal Judicial Officers—Executive Order No. 11992 of May 24, 1977 (De-

partment of Justice) [set out as a note preceding section 1 of Title 28, Judiciary and Judicial Procedure].

(j) United States Circuit Judge Nominating Commission—Executive Order No. 12059, as amended (Department of Justice) [set out as a note under section 44 of Title 28, Judiciary and Judicial Procedure].

(k) United States Court of Military Appeals Nominating Commission—Executive Order No. 12063 of June 5, 1978 (Department of Defense) [set out as a note under section 867 of Title 10, Armed Forces].

(l) United States Tax Court Nominating Commission—Executive Order No. 12064 of June 5, 1978 (Department of the Treasury) [set out as a note under section 7443 of Title 26, Internal Revenue Code].

(m) Judicial Nominating Commission for the District of Puerto Rico—Executive Order No. 12084, as amended (Department of Justice) [set out as a note under section 133 of Title 28, Judiciary and Judicial Procedure].

1-102. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act [Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out above] which are applicable to the committees listed in Section 1-101 of this Order, except that of reporting annually to Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with guidelines and procedures established by the Administrator of General Services.

1-103. The following Executive orders, that established committees which have terminated or whose work is completed, are revoked:

(a) Executive Order No. 11482 of September 22, 1969, establishing a Construction Industry Collective Bargaining Commission [set out as a note under section 171 of Title 29, Labor].

(b) Executive Order No. 11849 of April 1, 1975, establishing the Collective Bargaining Committee in Construction [set out as a note under section 171 of Title 29, Labor].

(c) Executive Order No. 11534 of June 4, 1970, establishing the National Council on Organized Crime [set out as a note preceding section 1 of Title 18, Crimes and Criminal Procedure].

(d) Executive Order No. 11971, as amended, establishing the Committee on Selection of the Director of the Federal Bureau of Investigation.

(e) Executive Order No. 11973 of February 17, 1977, establishing the President's Commission on Mental Health [set out as a note preceding section 6001 of Title 42, The Public Health and Welfare].

(f) Executive Order No. 11998 of June 27, 1977, establishing the President's Commission on Military Compensation [set out as a note under section 1009 of Title 37, Pay and Allowances of the Uniformed Services].

1-104. Executive Order No. 11948 is superseded.

1-105. This Order shall be effective December 31, 1978.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 1142; title 42 sections 254j, 292b, 300j-5, 300k-3, 300v-3.

INSPECTOR GENERAL ACT OF 1978

Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101

§ 1. Short title

This Act be cited as the "Inspector General Act of 1978".

§ 2. Purpose and establishment of Offices of Inspector General; departments and agencies involved

In order to create independent and objective units—

(1) to conduct and supervise audits and investigations relating to programs and operations of the Department of Agriculture, the Department of Commerce, the Department of Housing and Urban Development, the Department of the Interior, the Department of Labor, the Department of Transportation, the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, and the Veterans' Administration;

(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;

thereby is hereby established in each of such establishments an office of Inspector General.

§ 3. Appointment of Inspector General; supervision; removal; political activities; appointment of Assistant Inspector General for Auditing and Assistant Inspector General for Investigations

(a) There shall be at the head of each Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. Each Inspector General shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment. Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation.

(b) An Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(c) For the purposes of section 7324 of title 5, United States Code, no Inspector General shall be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws.

(d) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment, and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

§ 4. Duties and responsibilities; report of criminal violations to Attorney General

(a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established—

(1) to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of such establishment;

(2) to review existing and proposed legislation and regulations relating to programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed by such establishment or the prevention and detection of fraud and abuse in such programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate other activities

carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(4) to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by such establishment, or (B) the identification and prosecution of participants in such fraud or abuse; and

(5) to keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

(b) In carrying out the responsibilities specified in subsection (a)(1), each Inspector General shall—

(1) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions;

(2) establish guidelines for determining when it shall be appropriate to use non-Federal auditors; and

(3) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1).

(c) In carrying out the duties and responsibilities established under this Act, each Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) In carrying out the duties and responsibilities established under this Act, each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

§ 5. Semiannual reports; transmittal to Congress; availability to public; immediate report on serious or flagrant problems

(a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment disclosed by such activities during the reporting period;

(2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1);

(3) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed;

(4) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(5) a summary of each report made to the head of the establishment under section 6(b)(2) during the reporting period; and

(6) a listing of each audit report completed by the Office during the reporting period.

(b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing any comments such head deems appropriate.

(c) Within sixty days of the transmission of the semiannual reports of each Inspector General to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost.

(d) Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.

§ 6. Authority of Inspector General; information and assistance from Federal agencies; unreasonable refusal; office space and equipment

(a) In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act;

(2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable;

(3) to request such information or assistance as may be necessary for carrying out the

duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof;

(4) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court: *Provided*, That procedures other than subpenas shall be used by the Inspector General to obtain documents and information from Federal agencies;

(5) to have direct and prompt access to the head of the establishment involved when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

(6) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(7) to obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5, United States Code; and

(8) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

(b)(1) Upon request of an Inspector General for information or assistance under subsection (a)(3), the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to such Inspector General, or to an authorized designee, such information or assistance.

(2) Whenever information or assistance requested under subsection (a)(1) or (a)(3) is, in the judgment of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.

(c) Each head of an establishment shall provide the Office within such establishment with appropriate and adequate office space at central and field office locations of such establishment, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

§ 7. Complaints by employees; disclosure of identity; reprisals

(a) The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

(b) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(c) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

§ 8. Semiannual reports of Secretary of Defense on audit, investigative, and inspection units of Department of Defense; availability to public; exclusion of national security material; delegation of duty; submittal of proposed legislation; establishment of task force to study operation of audit, investigative, and inspection units; membership; comprehensive report; final report

(a)(1) The Secretary of Defense shall submit to the Congress semiannual reports during the period ending October 1, 1982, summarizing the activities of the audit, investigative and inspection units of the Department of Defense. Such reports shall be submitted within sixty days of the close of the reporting periods ending March 31 and September 30 and shall include, but not be limited to—

(A) a description of significant instances or patterns of fraud, waste, or abuse disclosed by the audit, investigative, and inspection activities during the reporting period and a description of recommendations for corrective action made with respect to such instances or patterns;

(B) a summary of matters referred for prosecution and of the results of such prosecutions; and

(C) a statistical summary, by categories of subject matter, of audit and inspection reports completed during the reporting period.

(2) Within sixty days of the transmission of the semiannual reports, the Secretary shall make copies of such reports available to the public upon request and at a reasonable cost.

(3) If the Secretary concludes that compliance with the reporting requirements in paragraphs (1) and (2) of this subsection would require inclusion of material that may constitute a threat to the national security or disclose an intelligence function or activity, the Secretary may exclude such material from the report. If material is excluded from a report under this

subsection, the Secretary shall provide the chairmen and ranking minority members of the appropriate committees or subcommittees with a general description of the nature of the material excluded.

(4) The Secretary may delegate his responsibilities under paragraphs (1) through (3): *Provided*, That the delegation be to an official within the Office of the Secretary of Defense who is a Presidential appointee confirmed by the Senate. In preparing the reports, the designee of the Secretary shall have the same access to information held by the audit, investigative or inspection units as the Secretary would.

(5) In order to effectuate the purposes of this Act with respect to the Department of Defense, the Secretary of Defense shall submit, not later than March 31, 1981, proposed legislation to establish appropriate reporting procedures, for the period after October 1, 1982, concerning the audit, investigative and inspection activities of the Department of Defense.

(b)(1) The Secretary of Defense shall establish a task force to study the operation of the audit, investigative, and inspection components in the Department of Defense which engage in the prevention and detection of fraud, waste, and abuse. The Secretary shall appoint the Director and other members of the task force: *Provided*, That the Director shall be a person who is not an employee of the Department of Defense. The Director shall have the authority to hire such additional staff as is necessary to complete the study.

(2) The Director and members of the task force and, upon the request of a member or the Director, the staff of the task force shall have access to all information relevant to the study and held by the audit, investigative, and inspection components in the Department of Defense including reports prepared by such components: *Provided*, That—

(A) such information or reports may be withheld if a component head determines that disclosure would compromise an active investigation of wrong-doing;

(B) the Inspectors General of the Military Departments may delete the names of individuals in a report prepared by them if the Inspector General determines that the inclusion of the names would affect the ability of the Inspector General to obtain information in future investigations and inspections; and

(C) no classified information shall be released to the task force unless the members and staff who will have access to the classified information have the appropriate clearances.

Upon the request of the Director, the Secretary of Defense and the Secretaries of the Military Departments shall assure that the task force has access to information as provided in this subsection.

(3) The task force shall prepare a comprehensive report that shall include, but not be limited to—

(A) a description of the functions of the audit, investigative and inspection components in the Department of Defense and the extent to which such components cooperate in their efforts to detect and prevent fraud, waste and abuse;

(B) an evaluation of whether such components are sufficiently independent to carry out their responsibilities;

(C) the relationship between such components and the Criminal Division of the Department of Justice; and

(D) recommendations for change in organization or functions that may be necessary to improve the effectiveness of such components.

(4) The task force shall submit its final report to the Secretary of Defense and the Director of the Office of Management and Budget. The Secretary and the Director of the Office of Management and Budget may, in the form of addenda to the report, provide any additional information that they deem necessary. The Secretary shall submit the report and the addenda to the Congress not later than April 1, 1980. The task force shall be disestablished sixty days following such submission.

(5) Any matter concerning the intelligence or counterintelligence activities of the Department of Defense and assigned by regulation to the Inspector General for Defense Intelligence shall be excluded from the study of the task force.

§ 9. Transfer of functions

(a) There shall be transferred—

(1) to the Office of Inspector General—

(A) of the Department of Agriculture, the offices of that department referred to as the "Office of Investigation" and the "Office of Audit";

(B) of the Department of Commerce, the offices of that department referred to as the "Office of Audits" and the "Investigations and Inspections Staff" and that portion of the office referred to as the "Office of Investigations and Security" which has responsibility for investigation of alleged criminal violations and program abuse;

(C) of the Department of Housing and Urban Development, the office of that department referred to as the "Office of Inspector General";

(D) of the Department of the Interior, the office of that department referred to as the "Office of Audit and Investigation";

(E) of the Department of Labor, the office of that department referred to as the "Office of Special Investigations";

(F) of the Department of Transportation, the offices of that department referred to as the "Office of Investigations and Security" and the "Office of Audit" of the Department, the "Offices of Investigations and Security, Federal Aviation Administration", and "External Audit Divisions, Federal Aviation Administration", the "Investigations Division and the External Audit Division of the Office of Program Review and Investigation, Federal Highway Administration", and the "Office of Program Audits, Urban Mass Transportation Administration";

(G) of the Community Services Administration, the offices of that agency referred

to as the "Inspections Division", the "External Audit Division", and the "Internal Audit Division";

(H) of the Environmental Protection Agency, the offices of that agency referred to as the "Office of Audit" and the "Security and Inspection Division";

(I) of the General Services Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations";

(J) of the National Aeronautics and Space Administration, the offices of that agency referred to as the "Management Audit Office" and the "Office of Inspections and Security";

(K) of the Small Business Administration, the office of that agency referred to as the "Office of Audits and Investigations"; and

(L) of the Veterans' Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations"; and

(2) such other offices or agencies, or functions, powers, or duties thereof, as the head of the establishment involved may determine are properly related to the functions of the Office and would, if so transferred, further the purposes of this Act,

except that there shall not be transferred to an Inspector General under paragraph (2) program operating responsibilities.

(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of any office or agency the functions, powers, and duties of which are transferred under subsection (a) are hereby transferred to the applicable Office of Inspector General.

(c) Personnel transferred pursuant to subsection (b) shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions except that the classification and compensation of such personnel shall not be reduced for one year after such transfer.

(d) In any case where all the functions, powers, and duties of any office or agency are transferred pursuant to this subsection, such office or agency shall lapse. Any person who, on the effective date of this Act [Oct. 1, 1978], held a position compensated in accordance with the General Schedule, and who, without a break in service, is appointed in an Office of Inspector General to a position having duties comparable to those performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of service in the new position.

§ 10. Conforming and technical amendments

[Section amended sections 5315 and 5316 of Title 5, Government Organization and Employees, and section 3522 of Title 42, The Public Health and Welfare, which amendments have been executed to text.]

§ 11. Definitions

As used in this Act—

(1) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Housing and Urban Development, the Interior, Labor, or Transportation or the Administrator of Community Services, Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans' Affairs, as the case may be;

(2) the term "establishment" means the Department of Agriculture, Commerce, Housing and Urban Development, the Interior, Labor, or Transportation or the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, or the Veterans' Administration, as the case may be;

(3) the term "Inspector General" means the Inspector General of an establishment;

(4) the term "Office" means the Office of Inspector General of an establishment; and

(5) the term "Federal agency" means an agency as defined in section 552(e) of title 5 (including an establishment as defined in paragraph (2)), United States Code, but shall not be construed to include the General Accounting Office.

§ 12. Effective date

The provisions of this Act and the amendments made by this Act [see section 10 of this Act] shall take effect October 1, 1978.

EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

Pub. L. 95-521, title II, Oct. 26, 1978, 92 Stat. 1836

§ 201. Persons required to file

(a) Within thirty days of assuming the position of an officer or employee designated in subsection (f), an individual shall file a report containing the information described in section 202(b) unless the individual has left another position designated in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title [sections 201 to 211 of this Act] with respect to nomination for the new position or as a candidate for the position.

(b) Within five days of the transmittal by the President to the Senate of the nomination of an individual (other than an individual covered by section 301(b) or an individual nominated for appointment to a grade or rank in the uniformed services for which the pay grade prescribed by section 201 of title 37, United States Code, is O-6 or below) to a position, appointment to which requires the advice and consent of the Senate, such individual shall file a report containing the information described in section 202(b). Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(c) Within thirty days of becoming a candidate in a calendar year for nomination or election to the office of President or Vice President, as determined by the Federal Election Commission, or on or before May 15 of that calendar year, whichever is later, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President or Vice President shall file a report containing the information described in section 202(b).

(d) Any individual who is an officer or employee designated in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 202(a).

(e) Any individual who occupies a position designated in subsection (f) shall, on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 202(a) covering the preceding calendar year if the report required by subsection (d) has not been filed and covering the portion of that calendar year up to the date the individual left such office or position, unless such individual has accepted employment in another position designated in subsection (f).

(f) The officers and employees referred to in subsections (a), (d), and (e) are—

(1) the President;

(2) the Vice President;

(3) each officer or employee in the executive branch, including a special Government employee as defined in section 202 of title 18, United States Code, whose position is classified at GS-16 or above of the General Schedule prescribed by section 5332 of title 5, United States Code, or the rate of basic pay for which is fixed (other than under the General Schedule) at a rate equal to or greater than the minimum rate of basic pay fixed for GS-16; each member of a uniformed service whose pay grade is at or in excess of O-7 under section 201 of title 37, United States Code; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

(4) each employee appointed pursuant to section 3105 of title 5, United States Code;

(5) any employee not described in paragraph (3) who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character, except that the Director of the Office of Government Ethics may, by regulation, exclude from the application of this paragraph any individual, or group of individuals, who are in such positions, but only in cases in which the Director determines such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government;

(6) the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS-16; and

(7) the Director of the Office of Government Ethics and each designated agency official.

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(g) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the Director of the Office of Government Ethics established by title IV of this Act, but the total of such extensions shall not exceed ninety days.

REFERENCES IN TEXT

Section 301(b), referred to in subsec. (b), is section 301(b) of Pub. L. 95-521, title III, Oct. 26, 1978, 92 Stat. 1851, which is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

This Act, referred to in subsec. (b), is Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824, known as the Ethics in Government Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 2, The Congress, and Tables.

Title IV of this Act, referred to in subsec. (g), is title IV of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1862, which enacted provisions entitled "Office of Government Ethics", set out in this Appendix and amended section 5316 of Title 5, Government Organization and Employees.

SHORT TITLE

For Short Title of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824, as the "Ethics in Government Act of 1978", see section 1 of Pub. L. 95-521, set out as a Short Title note under section 701 of Title 2, The Congress.

§ 202. Contents of reports

(a) Each report filed pursuant to section 201(d) shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $100 or more in value.

(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds $100 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

(i) not more than $1,000,

(ii) greater than $1,000 but not more than $2,500,

(iii) greater than $2,500 but not more than $5,000,

(iv) greater than $5,000 but not more than $15,000,

(v) greater than $15,000 but not more than $50,000,

(vi) greater than $50,000 but not more than $100,000, or

(vii) greater than $100,000.

(2)(A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph. A gift need not be so aggregated if, in an unusual case, a publicly available request for a waiver is granted.

(C) The identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value and received during the preceding calendar year.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceed $10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6)(A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual, during the two-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any cor-

poration, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(B) If any person, other than the United States Government, paid a nonelected reporting individual compensation in excess of $5,000 in any of the two calendar years prior to the calendar year during which the individual files his first report under this title [sections 201 to 211 of this Act], the individual shall include in the report—

(i) the identity of each source of such compensation; and

(ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to: (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(b) Each report filed pursuant to subsections (a), (b), and (c) of section 201 shall include a full and complete statement with respect to the information required by paragraphs (3), (4), (6), and (7) of subsection (a), as of a date, specified in such report, which shall be not more than thirty-one days prior to the date of filing, and the information required by paragraph (1) of subsection (a) for the year of filing and the preceding calendar year.

(c) In the case of any individual described in section 201(e), any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

(d)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), and (5) of subsection (a) are as follows:

(A) not more than $5,000;

(B) greater than $5,000 but not more than $15,000;

(C) greater than $15,000 but not more than $50,000;

(D) greater than $50,000 but not more than $100,000;

(E) greater than $100,000 but not more than $250,000; and

(F) greater than $250,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(e)(1) Except as provided in the last sentence of this paragraph, each report required by subsection (a), (b), or (c) shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and, with respect to a spouse or dependent child, all information required to be reported in subsection (a)(1)(B) with respect to income derived from any asset held by the spouse or dependent child and reported pursuant to paragraph (3). With respect to earned income, if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) In the case of any gift which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment or a brief description and the value of other gifts.

(C) In the case of any reimbursement which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of the reimbursement.

(D) In the case of items described in paragraphs (3) through (5), all information required to be reported under these paragraphs

other than items (i) which the reporting individual certifies represent the spouse or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Each report referred to in subsection (b) of this section shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3)); or

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of,

but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust under subsection (a)(1)(B) of this subsection.[1]

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, or a broker, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—

(i) is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,

(ii) is or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(iii) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1)(B) of this section, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the

[1] So in original. Probably should read "section".

subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

For purposes of this subsection, "interested party" means a reporting individual, his spouse, and any dependent child if the reporting individual, his spouse, or dependent child has a beneficial interest in the principal or income of a qualified blind trust; "broker" has the meaning set forth in section 78 of title 15, United States Code; and "supervising ethics office" means the Office of Government Ethics.

(4)(A) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of section 208 of title 18, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(B) The provisions of subparagraph (A) shall not apply with respect to a trust created for the benefit of a reporting individual appointed to office by the President, by and with the consent of the Senate, or the spouse, dependent child, or minor child of such a person, if—

(i) the Director of the Office of Government Ethics, in concurrence with the Attorney General, finds that—

(I) the assets placed in the trust consist of a well-diversified portfolio of readily marketable securities;

(II) none of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

(III) the trust instrument prohibits the trustee, notwithstanding the provisions of paragraphs (3)(C)(iii) and (iv) of this subsection, from making public or informing any interested party of the sale of any securities;

(IV) the trustee is given power of attorney, notwithstanding the provisions of paragraph (3)(C)(v) of this subsection, to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

(V) except as otherwise provided in this paragraph, the trust instrument provides (or in the case of a trust established prior to the effective date of this Act which by its terms does not permit amendment, the trustee, the reporting individual, and any other interested party agree in writing) that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); and

(ii) the reporting individual (other than an individual who is in such an office at the time of enactment of this Act [Oct. 26, 1978] and has an existing trust which is a good faith attempt to create a blind trust) has informed the Congressional committee considering his nomination at the time his financial disclosure statement is filed with the Committee of his intention to comply with this paragraph.

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d).

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d).

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his superivising ethics office of such dissolution, and

(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of this section of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 205 and the provisions of that section shall apply.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection, (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or (iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(ii) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $1,000.

(7) Any trust which is in existence prior to the date of the enactment of this Act [Oct. 26, 1978] shall be considered a qualified blind trust if—

(A) the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;

(B) the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and

(C) a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party and the category of value of each such asset at the time it was placed in the trust, and a list of assets previously placed in the trust by an interested party which have been sold is filed and made available to the public as provided under paragraph (5) of this subsection.

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

REFERENCES IN TEXT

Section 78 of Title 15, referred to in subsec. (f)(3), probably means section 78c of Title 15, Commerce and Trade.

The effective date of this Act, referred to in subsec. (f)(4)(B)(i)(V), probably means the effective date of this title, title II of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1836, which is effective Jan. 1, 1979.

§ 203. Filing of reports

(a) Except as otherwise provided in this subsection, the reports required under this title shall be filed by the reporting individual with the designated agency official at the agency by which he is employed or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.

(b) The President and the Vice President shall file reports required under this title with the Director of the Office of Government Ethics.

(c) Copies of the reports required to be filed under this title by the Postmaster General, the Deputy Postmaster General, the Governors of the Board of Governors of the United States Postal Service, designated agency officials, candidates for the office of President or Vice President and officers and employees in (and nominees to) offices or positions which require confirmation by the Senate or by both Houses of Congress other than those referred to in subsection (f) shall be transmitted to the Director of the Office of Government Ethics. The Director shall forward a copy of the report of each nominee to the congressional committee considering the nomination.

(d) Reports required to be filed under this title [sections 201 to 211 of this Act] by the Director shall be filed in the Office of Government Ethics and, immediately after being filed, shall be made available to the public in accordance with this title.

(e) Each individual identified in section 201(c) shall file the reports required by this title with the Federal Elections Commission.

(f) Reports required of members of the uniformed services shall be filed with the Secretary concerned.

(g) The Office of Government Ethics shall develop and make available forms for reporting the information required by this title [sections 201 to 211 of this Act].

§ 204. Failure to file or filing false reports

(a) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully falsifies or who knowingly or willfully fails to file or report any information that such individual is required to report pursuant to section 202. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $5,000.

(b) The head of each agency, each Secretary concerned, or the Director of the Office of Government Ethics, as the case may be, shall refer to the Attorney General the name of any individual he has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.

(c) The President, the Vice President, the Secretary concerned, the head of each agency, and the Civil Service Commission, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.

§ 205. Custody of and public access to reports

(a) Each agency shall make each report filed with it under this title [sections 201 to 211 of this Act] available to the public in accordance with the provisions of subsection (b) of this section, together with a copy of the official position description of the Government office or position held by the reporting individual involved (if available) which shall be added to such report by such individual's designated agency official or by the Secretary concerned, except that this section does not require public availability of the report filed by any individual

in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. In addition, such individuals may be authorized, notwithstanding section 204(a), to file such additional reports as are necessary to protect their identity from public disclosure if the President first finds that such filing is necessary in the national interest.

(b) Each agency shall, within fifteen days after any report is received by the agency under this title [sections 201 to 211 of this Act], permit inspection of such report by or furnish a copy of such report to any person requesting such inspection or copy. The agency may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(c)(1) It shall be unlawful for any person to obtain, or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1) of this subsection. The court in which such action is brought may assess against such person a penalty in any amount not to exceed $5,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

(d) Any report filed with an agency, or transmitted to the Director of the Office of Government Ethics, pursuant to this title [sections 201 to 211 of this Act] shall be retained by such agency or the Office of Government Ethics, or both, as the case may be. Such report shall be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 201(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 201(c) and was not subsequently elected, such reports shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President unless needed in an ongoing investigation.

§ 206. Review of reports

(a) Each designated agency official or Secretary concerned shall make provisions to ensure that each report filed with him under this title [sections 201 to 211 of this Act] shall be reviewed within sixty days after the date of such filing, except that the Director of the Office of Government Ethics shall review only those reports transmitted to him under this title within sixty days after the date of transmittal.

(b)(1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, Secretary concerned, or designated agency official, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

(2) If the Director of the Office of Government Ethics, Secretary concerned, or designated agency official, after reviewing any report under subsection (a)—

(A) believes additional information is required to be submitted, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford him a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance with such laws and regulations.

(3) If the Director of the Office of Government Ethics, Secretary concerned, or designated agency official reaches an opinion under paragraph (2)(B) that an individual is not in compliance with applicable laws and regulations, he shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the in dividual of which steps, if any, would in his opinion be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken. Such steps may include, as appropriate—

(A) divestiture,

(B) restitution,

(C) the establishment of a blind trust,

(D) request for an exemption under section 208(b) of title 18, United States Code, or

(E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such regulations as the Director of the Office of Government Ethics or a Secretary concerned, as the case may be, may prescribe.

(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by an individual in a position (other than in the uniformed services), appointment to which requires the advice and consent of the Senate, the matter

shall be referred to the President for appropriate action.

(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the uniformed services, the Secretary concerned shall take appropriate action.

(6) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee the matter shall be referred to the head of the appropriate agency for appropriate action; except that in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken.

(7) For purposes of assisting employees in avoiding situations in which they would not be in compliance with applicable laws and regulations, each Secretary concerned and designated agency official (including the President in the case of the individuals employed in the Executive Office of the President) shall maintain a list of those circumstances or situations which have resulted or may result in noncompliance with such laws or regulations. Such list shall be periodically published, and shall be furnished to those individuals employed within the agency who are required to file reports under this title [sections 201 to 211 of this Act]. The absence of any situation or circumstance from such a list shall not be construed as an indication that an individual in such circumstance or situation would be in compliance with such laws or regulations.

(8) The preceding provisions of this subsection shall not apply in the case of the President or Vice President, or a candidate or nominee for such office.

§ 207. Additional disclosure requirements

(a) The President may require officers and employees in the executive branch (including the United States Postal Service and members of the uniformed services) not covered by this title [sections 201 to 211 of this Act] to submit confidential reports in such form as is required by this title. Subsections (a), (b), and (d) of section 205 shall not apply with respect to any such report.

(b) The Director of the Office of Government Ethics may by rule require disclosure in the reports filed pursuant to subsections (a) and (c) of section 202, of gifts received by a dependent child of a reporting individual if the information required to be disclosed does not exceed that which must be reported by a spouse of a reporting individual under this title [sections 201 to 211 of this Act].

(c) The provisions of this title [sections 201 to 211 of this Act] requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

(d) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, or regulation.

References in Text

This Act, referred to in subsec. (d), means Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824, known as the Ethics in Government Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 2, The Congress, and Tables.

§ 208. Authority of Comptroller General

The Comptroller General shall have access to financial disclosure reports filed under this title [sections 201 to 211 of this Act] for the purposes of carrying out his statutory responsibilities.

§ 209. Definitions

For the purposes of this title [sections 201 to 211 of this Act], the term—

(1) "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; net and gross income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(2) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

(3) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government;

(D) food and beverages consumed at banquets, receptions, or similar events; or

(E) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;

(4) "honoraria" has the meaning given such term in the Federal Election Campaign Act of 1971 [2 U.S.C. 431 et seq.].

(5) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(6) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(7) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954 [26 U.S.C. 152];

(8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(9) "Secretary concerned" has the meaning set forth in section 101(8) of title 10, United States Code, and, in addition, means—

(A) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration; and

(B) the Secretary of Health, Education, and Welfare, with respect to matters concerning the Public Health Service; and

(10) "designated agency official" means an officer or employee who is designated to administer the provisions of this title within an agency.

REFERENCES IN TEXT

The Federal Election Campaign Act of 1971, as amended, referred to in par. (4), is Pub. L. 92-225, Feb. 7, 1972, 86 Stat. 3, as amended, which is classified principally to chapter 14 (§ 431 et seq.) of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 431 of Title 2 and Tables.

§ 210. Outside earned income

Except where the employee's agency or department shall have more restrictive limitations on outside earned income, all employees covered by this title [section 201 to 211 of this Act] who are compensated at a pay grade in the General Schedule of grade 16 or above and who occupy nonjudicial full-time positions appointment to which is required to be made by the President, by and with the advice and consent of the Senate, may not have in any calendar year outside earned income attributable to such calendar year which is in excess of 15 percent of their salary.

REFERENCES IN TEXT

The General Schedule, referred to in text, is set out under section 5332 of Title 5, Government Organization and Employees.

§ 211. Effective date

The provisions made by this title [sections 201 to 211 of this Act] shall take effect on January 1, 1979, and the reports filed under section 201(d) on May 15, 1979, shall include information for calendar year 1978.

OFFICE OF GOVERNMENT ETHICS

Pub. L. 95-521, title IV, Oct. 26, 1978, 92 Stat. 1862

§ 401. Establishment in Office of Personnel Management; appointment of Director

(a) There is established in the Office of Personnel Management an office to be known as the Office of Government Ethics.

(b) There shall be at the head of the Office of Government Ethics a Director (hereinafter referred to as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate.

SHORT TITLE

For Short Title of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824, as the "Ethics in Government Act of 1978", see section 1 of Pub. L. 95-521, set out as a Short Title note under section 701 of Title 2, The Congress.

§ 402. Authority and functions

(a) The Director shall provide, under the general supervision of the Office of Personnel Management, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency, as defined in section 105 of title 5, United States Code.

(b) The responsibilities of the Director shall include—

(1) developing and recommending to the Office of Personnel Management, in consultation with the Attorney General, rules and regulations, to be promulgated by the President, or the Office of Personnel Management pertaining to conflicts of interest and ethics in the executive branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the executive branch as required by title II of this Act;

(2) developing and recommending to the Office of Personnel Management, in consultation with the Attorney General, rules and regulations to be promulgated by the President or the Office of Personnel Management pertaining to the identification and resolution of conflicts of interest;

(3) monitoring and investigating compliance with the public financial disclosure requirements of title II of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial statements filed pursuant to such title;

(4) conducting a review of financial statements to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review;

(5) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch;

(6) interpreting rules and regulations issued by the President or the Office of Personnel Management governing conflict of interest and ethical problems and the filing of financial statements;

(7) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases;

(8) establishing a formal advisory opinion service whereby advisory opinions are rendered on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments with respect to the request for such advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public;

(9) ordering corrective action on the part of agencies and employees which the Director deems necessary;

(10) requiring such reports from executive agencies as the Director deems necessary;

(11) assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments;

(12) evaluating, with the assistance of the Attorney General, the need for changes in rules and regulations issued by the Office of Personnel Management and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;

(13) cooperating with the Attorney General in developing an effective system for reporting allegations of violations of the conflict of interest laws to the Attorney General, as required by section 535 of title 28, United States Code; and

(14) providing information on and promoting understanding of ethical standards in executive agencies.

(c) In the development of policies, rules, regulations, procedures, and forms to be recommended, authorized, or prescribed by him, the Director shall consult when appropriate with the executive agencies affected and with the Attorney General.

(d) Pursuant to the Director's responsibilities under subsection (b)(1), the Director shall, within one hundred and twenty days after the date of enactment of this Act [Oct. 26, 1978], develop and recommend to the Office of Personnel Management, and the Office of Personnel Management shall promulgate a regulation establishing a method for readily determining, without the necessity for expert appraisal, the fair market value of assets required to be disclosed by this title [sections 401 to 405 of this Act].

REFERENCES IN TEXT

Title II of this Act, referred to in subsec. (b)(1), (3), is title II of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1836, which enacted provisions entitled "Executive Personnel Financial Disclosure Rquirements", set out in this Appendix.

§ 403. Administrative provisions

Upon the request of the Director, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Director to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Director all information and records in its possession which the Director may determine to be necessary for the performance of his duties.

REFERENCES IN TEXT

This Act, referred to in par. (1), means Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824, known as the Ethics in Government Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 2, The Congress, and Tables.

§ 404. Rules and regulations

In promulgating rules and regulations pertaining to financial disclosure, conflict of interest, and ethics in the executive branch, the Office of Personnel Management shall issue rules and regulations in accordance with chapter 5 of title 5, United States Code. Any person may seek judicial review of any such rule or regulation.

§ 405. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this title [sections 401 to 405 of this Act], and for no other purpose—

(1) not to exceed $2,000,000 for the fiscal year ending September 30, 1979; and

(2) not to exceed $2,000,000 for each of the four fiscal years thereafter.

REORGANIZATION PLANS

This portion of the Appendix contains Reorganization Plans which took effect in accordance with the provisions of section 901 et seq. of title 5

REORGANIZATION PLAN NO. 8 OF 1953

Eff. Aug. 1, 1953, 18 F.R. 4542, 67 Stat. 642

* * * * *

United States Information Agency

§ 1. Establishment of Agency

[Superseded. Reorg. Plan No. 2 of 1977, § 9(b), eff. Oct. 11, 1977, 42 F.R. 62461, 91 Stat. 1639. Section was amended by act June 28, 1955, ch. 189, § 12(c)(21), 69 Stat. 183 and related to the establishment of the United States Information Agency.]

§ 2. Transfer of Functions

(a) Subject to subsection (c) of this section, there are hereby transferred to the Director (1) the functions vested in the Secretary of State by title V of the United States Information and Educational Exchange Act of 1948, as amended [sections 1461 and 1462 of Title 22, Foreign Relations and Intercourse], and so much of functions with respect to the interchange of books and periodicals and aid to libraries and community centers under sections 202 and 203 of the said Act [sections 1447 and 1448 of Title 22] as is an integral part of information programs under that Act [sections 1431-1479 of Title 22], together with so much of the functions vested in the Secretary of State by other provisions of the said Act [sections 1431 to 1479 of Title 22] as is incidental to or is necessary for the performance of the functions under title V [sections 1461 and 1462 of Title 22] and sections 202 and 203 [sections 1447 and 1448 of Title 22] transferred by this section, and (2) [Superseded. Reorg. Plan No. 2 of 1977, § 9(b), eff. Oct. 11, 1977, 42 F.R. 62461, 91 Stat. 1639. Paragraph related to functions of the Secretary of State with respect to information programs relating to Germany and Austria.]

(b) [Superseded. Reorg. Plan No. 2 of 1977, § 9(b), eff. Oct. 11, 1977, 42 F.R. 62461, 91 Stat. 1639. Subsection related to the transfer to the Director of functions vested in the Director for Mutual Security by the Mutual Security Act of 1951, as amended, act Oct. 10, 1951, ch. 479, 65 Stat. 373, which related to foreign information programs, as formerly provided for in section 1652 of Title 22, Foreign Relations and Intercourse.]

(c)(1) The Secretary of State shall direct the policy and control the content of a program, for use abroad, on official United States positions, including interpretations of current events, identified as official positions by an exclusive descriptive label.

* * * * *

(3) [Superseded. Reorg. Plan No. 2 of 1977, § 9(b), eff. Oct. 11, 1977, 42 F.R. 62461, 91 Stat. 1639. Paragraph provided that nothing in subsec. (c) of this section was to affect the functions of the Secretary of State with respect to conducting negotiations with other governments.]

* * * * *

§ 3. Performance of Transferred Functions

[Superseded. Reorg. Plan No. 2 of 1977, § 9(b), eff. Oct. 11, 1977, 42 F.R. 62461, 91 Stat. 1639. Section related to the performance of transferred functions.]

§ 4. Incidental Transfers

[Superseded. Reorg. Plan No. 2 of 1977, § 9(b), eff. Oct. 11, 1977, 42 F.R. 62461, 91 Stat. 1639. Section related to incidental transfers.]

§ 5. Interim Provisions

[Superseded. Reorg. Plan No. 2 of 1977, § 9(b), eff. Oct. 11, 1977, 42 F.R. 62461, 91 Stat. 1639. Section related to interim provisions.]

* * * * *

REORGANIZATION PLAN NO. 1 OF 1969

Reorganization Plan No. 1 of 1969, 34 F.R. 15783, 83 Stat. 859, which transferred all of the executive and administrative functions of the Interstate Commerce Commission to the Chairman of the Commission with respect to the appointment and supervision of personnel, the distribution of business among the administrative units of the Commission, and the use and expenditure of funds, was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1466. See section 10301 et seq. of Title 49, Transportation.

REORGANIZATION PLAN NO. 4 OF 1970

Eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, as amended by Pub. L. 94-461, § 4(c)(1), Oct. 8, 1976, 90 Stat. 1969; Pub. L. 95-219, § 3(a)(1), Dec. 28, 1977, 91 Stat. 1613.

* * * * *

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

* * * * *

Sec. 2. Establishment of Administration

* * * * *

(e)(1) There shall be in the Administration a General Counsel and five Assistant Administrators, one of whom shall be the Assistant Administrator for Coastal Zone Management and one of whom shall be the Assistant Administrator for Fisheries. The General Counsel and each Assistant Administrator shall be appointed by the Secretary, subject to approval of the President, and shall be compensated at a rate now or hereafter provided for level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

(2) The General Counsel shall serve as the chief legal officer for all legal matters which may arise in connection with the conduct of the functions of the Administration.

(3) The Assistant Administrator for Coastal Zone Management shall be an individual who is, by reason of background and experience, especially qualified to direct the implementation and administration of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(4) The Assistant Administrator for Fisheries shall be responsible for all matters related to living marine resources which may arise in connection with the conduct of the functions of the Administration.

* * * * *

REORGANIZATION PLAN NO. 1 OF 1977

42 F.R. 56101, 91 Stat. 1633

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 15, 1977,[1] pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

EXECUTIVE OFFICE OF THE PRESIDENT

SECTION 1. REDESIGNATION OF DOMESTIC COUNCIL STAFF

The Domestic Council staff is hereby designated the Domestic Policy Staff and shall consist of such staff personnel as are determined by the President to be necessary to assure that the needs of the President for prompt and comprehensive advice are met with respect to matters of economic and domestic policy. The staff shall continue to be headed by an Executive Director who shall be an Assistant to the President, designated by the President, as provided in Section 203 of Reorganization Plan No. 2 of 1970 [set out in this Appendix]. The Executive Director shall perform such functions as the President may from time to time direct.

SEC. 2. ESTABLISHMENT OF AN OFFICE OF ADMINISTRATION

There is hereby established in the Executive Office of the President the Office of Administration which shall be headed by the President. There shall be a Director of the Office of Administration. The Director shall be appointed by the President and shall serve as chief administrative officer of the Office of Administration. The President is authorized to fix the compensation and duties of the Director.

The Office of Administration shall provide components of the Executive Office of the President with such administrative services as the President shall from time to time direct.

SEC. 3. ABOLITION OF COMPONENTS

The following components of the Executive Office of the President are hereby abolished:

A. The Domestic Council;

B. The Office of Drug Abuse Policy;

C. The Office of Telecommunications Policy; and

D. The Economic Opportunity Council.

SEC. 4. APPOINTMENT OF THE ASSISTANT SECRETARY OF COMMERCE FOR COMMUNICATIONS AND INFORMATION

There shall be in the Department of Commerce an Assistant Secretary for Communications and Information who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be entitled to receive compensation at the rate now or hereafter prescribed by law for Level IV of the Executive Schedule [5 U.S.C. 5315].

[1] As amended Sept. 15, 1977.

SEC. 5. TRANSFERS OF FUNCTIONS

The following functions shall be transferred:

A. All functions vested in the Director of the Office of Science and Technology Policy and in the Office of Science and Technology Policy pursuant to sections 205(a)(2), 206 and 209 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (Public Law 94-282; 90 Stat. 459) [sections 6614(a)(2), 6615 and 6618 of Title 42, The Public Health and Welfare], are hereby transferred to the Director of the National Science Foundation. The Intergovernmental Science, Engineering, and Technology Advisory Panel, the President's Committee on Science and Technology, and the Federal Coordinating Council for Science, Engineering and Technology, established in accordance with the provisions of Titles II, III, IV of the National Science and Technology Policy, Organization, and Priorities Act of 1976 [sections 6611 et seq., 6631 et seq., and 6651 et seq. of Title 42], are hereby abolished, and their functions transferred to the President.

B. Those functions of the Office of Telecommunications Policy and of its Director relating to:

(1) the preparation of Presidential telecommunications policy options including, but not limited to those related to the procurement and management of Federal telecommunications systems, national security, and emergency matters; and

(2) disposition of appeals from assignments of radio frequencies to stations of the United States Government;

are hereby transferred to the President who may delegate such functions within the Executive Office of the President as the President may from time to time deem desirable. All other functions of the Office of Telecommunications Policy and of its Director are hereby transferred to the Secretary of Commerce who shall provide for the performance of such functions.

C. The functions of the Office of Drug Abuse Policy and its Director are hereby transferred to the President, who may delegate such functions within the Executive Office of the President as the President may from time to time deem desirable.

D. The functions of the Domestic Council are hereby transferred to the President, who may delegate such functions within the Executive Office of the President as the President may from time to time deem desirable.

E. Those functions of the Council on Environmental Quality and the Office of Environmental Quality relating to the evaluation provided for by Section 11 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Public Law 93-577, 88 Stat. 1878) [section 5910 of Title 42], are hereby transferred to the Administrator of the Environmental Protection Agency.

F. Those functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat (Public Law 92-463, 86 Stat. 770, as amended by Public Law 94-409, 90 Stat. 1247) [see section 7 of the Federal Advisory Committee Act, Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in this Appendix] are hereby transferred to the Administrator of General Services.

G. The functions of the Economic Opportunity Council are hereby transferred to the President, who may delegate such functions within the Executive Office of the President as the President may from time to time deem desirable.

SEC. 6. INCIDENTAL TRANSFERS

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate department, agency, or component at such time or times as the Director of

the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of all agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SEC 7. EFFECTIVE DATE

This Reorganization Plan shall become effective at such time or times on or before April 1, 1978, as the President shall specify, but no sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I herewith transmit my plan for the Reorganization of the Executive Office of the President (EOP), Reorganization Plan No. 1 of 1977. This plan is the first of a series I intend to submit under the reorganization authority vested in me by the Reorganization Act of 1977 (Public Law 95-17). It adheres to the purposes set forth in Section 901(a) of the Act [see section 901(a) of Title 5].

This plan in conjunction with the other steps I am taking will:

Eliminate seven of the seventeen units now within the EOP and modify the rest. There were 19 units when I took office; the President's Foreign Intelligence Advisory Board and the Economic Policy Board have already been abolished. Thus with this plan I will have eliminated nine of 19 EOP units.

Reduce EOP staffing by about 250 which includes the White House staff reduction of 134 or 28 percent which I have already ordered.

Improve efficiency by centralizing administrative functions; and

Improve the process by which information is provided for Presidential decisionmaking.

These recommendations arise from a careful, systematic study of the EOP. They are based on the premise that the EOP exists to serve the President and should be structured to meet his needs. They will reduce waste and cost while improving the service the President, and the nation, receive from the EOP.

The EOP now consists of the immediate White House Office, the Vice President's Office, the Office of Management and Budget, and fourteen other agencies. The EOP has a budget authority of about $80,000,000 and 1,712 full time employees.

The White House Office concentrates on close personal support including policy and political advice and administrative and operational services. The Office of the Vice President provides similar support to him. OMB's primary mission is to develop and implement the budget; it also carries out a number of management and reorganization activities.

Three EOP units have responsibility for policy development:

National Security Council.
Domestic Council.
Council on International Economic Policy.

The other 11 are more specialized offices that offer analysis and advice, help develop policy in certain areas, or carry out special projects. These are:

Council of Economic Advisers.
Council on Wage and Price Stability.
Office of the Special Representative for Trade Negotiations.
Council on Environmental Quality.
Office of Science and Technology Policy.
Office of Drug Abuse Policy.
Office of Telecommunications Policy.
Intelligence Oversight Board.
Federal Property Council.
Energy Resources Council.
Economic Opportunity Council.

To make the EOP more effective, four steps are necessary:

I. Strengthen management of policy issues.
II. Limit the EOP, wherever possible, to functions directly related to the President's work.
III. Centralize administrative services.
IV. Reduce size of White House and EOP staffs.

I. STRENGTHEN PROCESS MANAGEMENT OF POLICY ISSUES

Perhaps the most important function of the President's staff is to make sure he has the wide variety of views and facts he needs to make decisions. By building a more orderly system for collecting information and advice, the President can make sure that he will hear all the views he should--and hear them in time. To better insure that this happens, I am taking the following actions to:

Institute for domestic and economic issues, a system similar to the Presidential Review Memorandum process currently used for National Security issues.

Create a committee of Presidential advisers, chaired by the Vice President, to set priorities among issues and oversee their staffing.

Assure that Presidential decision memoranda on policy issues are coordinated with Cabinet and EOP advisers most involved with the issue.

Consolidate under the Staff Secretary the two current White House paper circulation systems.

Appoint a group of advisers to review the decisionmaking process periodically.

Give the Assistant to the President for Domestic Affairs and Policy clear responsibility for managing the way in which domestic and most economic policy issues are prepared for Presidential decision.

Assign follow-up responsibility for Presidential decisions as follows: immediate follow-up will be handled by the NSC or Domestic Policy Staff most directly involved in the issue; long term follow-up on selected issues will be handled by the Assistant to the President for Intergovernmental Relations.

These actions recognize that the White House and Executive Office staff must use their proximity to the President to insure that the full resources of the government and the public are brought to bear on Presidential decisions in a timely fashion. It is my purpose in instituting these changes to strengthen Cabinet participation in Presidential decisions.

II. RATIONALIZE EOP STRUCTURE BY LIMITING EOP, WHEREVER POSSIBLE, TO FUNCTIONS WHICH BEAR A CLOSE RELATIONSHIP TO THE WORK OF THE PRESIDENT

As the President's principal staff institution, there are several major things the EOP must do:

Provide day-to-day operational support (e.g. scheduling, appointments) and help the President communicate with the public, the Congress, and the press.

Manage the budget and coordinate Administration positions on matters before the Congress.

Manage the Presidential decisionmaking processes efficiently and fairly, and bring the President the widest possible range of opinions.

Help the President: plan and set priorities; monitor and evaluate progress toward achieving the President's objectives; understand and resolve major conflicts among line subordinates; manage crises, especially in national security matters.

In order to restructure the EOP around these basic functions, the functions of seven units should be discontinued or transferred, and ten units, including the White House Office, should be retained but modified.

Seven units should be discontinued or their functions transferred. These are:

1. Office of Drug Abuse Policy.
2. Office of Telecommunications Policy.
3. Council on International Economic Policy.
4. Federal Property Council.
5. Energy Resources Council.

6. Economic Opportunity Council.
7. Domestic Council.

The functions of the Office of Drug Abuse Policy (ODAP) can be performed by a smaller staff reporting to a Presidential adviser in the EOP. The Office itself will be discontinued.

Much of the work done by the Office of Telecommunications Policy (OTP) can be more effectively performed outside the EOP. It is important that the EOP have the capacity to resolve differences and that the President have immediate advice on telecommunications and information policy, especially on national security, emergency preparedness and privacy issues. This only requires a small staff within EOP. The Office of Management and Budget would take responsibility for Federal telecommunications procurement and management policy and arbitration of interagency disputes about frequency allocation. All other functions except developing Presidential policy options would be transferred to a new office within the Department of Commerce, headed by a new Assistant Secretary for Communications and Information, who will perform many of the functions previously performed by the head of the OTP.

I propose that the Economic Opportunity Council be discontinued; it is dormant and its only active function (preparation of the Catalogue of Federal Domestic Assistance) is being performed by OMB. Three other units are also inactive and should be discontinued: Council on International Economic Policy, the Federal Property Council, and the Energy Resources Council.

The Domestic Council should be abolished. It has rarely functioned as a Council, because it is too large and its membership too diverse to make decisions efficiently. Its functions have been performed entirely by its staff. This Domestic Policy Staff should report to the Assistant to the President for Domestic Affairs and Policy. Under the policy process system described earlier, they should manage the process which coordinates the making of domestic and most economic policy. They should work closely with the Cabinet departments and agencies to insure that the views of the Cabinet and agency heads are brought to the President before decisions are made.

The ten EOP units which will continue with some modification are:

1. White House Office.
2. Office of the Vice President.
3. Office of Management and Budget.
4. Council on Environmental Quality.
5. Council of Economic Advisers.
6. Office of Science and Technology Policy.
7. Office of the Special Representative for Trade Negotiations.
8. National Security Council.
9. Intelligence Oversight Board.
10. Council on Wage and Price Stability.

The operations of the Office of the Vice President reflect the combination of constitutional, statutory, and Presidentially assigned duties that make it unique among EOP units. Because his interests and assignments cover the same range as the President's, the Vice President requires a staff with expertise in diverse areas. Its basic functions should not be changed. However, I propose that certain support functions—involving accounting, personnel services, and supply—be transferred to a centralized EOP Administrative Unit.

The Office of Management and Budget would remain as a separate entity in the EOP, but some functional changes should be made. Four functions should be transferred from OMB to other parts of the government:

Administration to the new EOP Central Administrative Unit;

Executive Department/Labor Relations (except for Pay Agent, Executive Level Pools, and Legislative Analysis) to the Civil Service Commission;

Advisory Committee Management Secretariat to the General Services Administration;

Statistical Policy (except Forms Clearance) to the Department of Commerce.

I have asked the OMB to reorganize its management arm to emphasize major Presidential initiatives, such as reorganization, program evaluation, paperwork reduction, and regulatory reform.

The Council on Environmental Quality (CEQ) should remain in the EOP as an environmental adviser to the President. The CEQ's major purpose is to provide an independent assessment of our policies for improving the environment. Toward this end, it will analyze long term trends and conditions in the environment. It will advise OMB on the reorganization of natural resources functions within the Federal government. The Council will retain the functions it now has under NEPA and Executive Order No. 11514 with the exception of routine review of the adequacy of impact statements and the administrative aspects of their receipt and handling. The EPA will take over CEQ's evaluation responsibility under the Federal Nonnuclear Energy Research Development Act of 1974 [section 5901 et seq. of Title 42, The Public Health and Welfare]. The CEQ will continue to review and publish the Annual Report on Environmental Quality.

The strength of the Council of Economic Advisers (CEA) lies in its economic analysis of current policy choices. It also presents objective economic data, makes macroeconomic forecasts, and analyzes economic trends and their impact on the national economy. It will continue with a small reduction in staff.

The Office of Science and Technology Policy (OSTP) should retain those science, engineering, and technology functions which can be so useful in helping the President and his advisers make decisions about policy and budget issues. Instead of the Intergovernmental Science, Engineering, and Technology Advisory Panels, the President should rely on an intergovernmental relations working group, chaired by the Science Adviser. The Federal Coordinating Council on Science and Technology should operate as a sub-Cabinet working group chaired by the Science Adviser. The reorganization work of the President's Committee on Science and Technology would be part of the overall reorganization effort. The responsibility for preparing certain reports should be transferred to the National Science Foundation.

The proposal places manageable limits on OSTP's broad mandate while emphasizing functions that support the President.

The Office of the Special Representative for Trade Negotiations (STR) is now operating effectively and will be retained essentially as is. With the difficult negotiations now underway in Geneva, the benefits of transferring the STR to another agency are outweighed by the potential reduction in its effectiveness as an international negotiator.

The National Security Council (NSC) will be retained in its present form and its staff slightly reduced.

Intelligence Oversight Board (IOB) should be retained to insure that abuses of the past are not repeated and to emphasize Presidential concerns regarding intelligence issues.

The Council of Wage and Price Stability (COWPS) is a necessary weapon in the continuing fight against inflation and will be retained. To be sure that its work is closely coordinated with the economic analyses performed by the Council of Economic Advisers (CEA), COWPS should be directed by the Chairman of CEA.

III. CENTRALIZE ADMINISTRATIVE FUNCTIONS

About 380 (22 percent) of the full-time, permanent EOP personnel perform administrative support services in EOP units. Most EOP units besides the White House and OMB are too small to provide a full complement of administrative services. They depend on the White House, OMB, GSA, other federal departments, or several of these sources for many of these services. This approach is inefficient; the quality is uneven and the coordination poor. Some services are duplicated, others inconsistently distributed (excess capacity in some units and deficiencies in others), and most too costly.

I propose to combine administrative support operations into a Central Administrative Unit in EOP to provide support in administrative services common to all EOP entities. It should be a separate EOP entity because of the need to assure equal access by all other units.

This consolidation will result in:

Saving of roughly 40 positions and about $1.1 million improved and more innovative services.

A focus for monitoring the efficiency and responsibility of administrative services.

A base for an effective EOP budget/planning system through which the President can manage an integrated EOP rather than a collection of disparate units.

The EOP has never before been organized as a single, unified entity serving the President. It is only by viewing it as a whole that we can improve efficiency through steps like the Central Administrative Unit.

IV. REDUCE THE SIZE OF WHITE HOUSE AND EOP STAFFS

I am reducing the White House staff by 28 percent, from the 485 I inherited from my predecessor to 351. This involves cuts in my policy and administrative staffs as well as transfers to the Central Administrative Unit.

I estimate that this plan and the other steps I am taking will reduce staff levels in the EOP by about 250, from 1,712 full-time permanent positions to about 1,460 and will save the taxpayers at least $6 million.

As in the rest of the government, I will be reluctant to add staff unless necessary to help me do my job better.

I ask that you support me in improving the operations of the Executive Office of the President by approving the attached reorganization plan.

In summary this plan would:

Abolish the Domestic Council and establish a Domestic Policy Staff.

Establish within the EOP a Central Administrative Unit.

Transfer certain functions of the Council on Environmental Quality to the President for redelegation.

Abolish the Office of Drug Abuse Policy and vest functions in the President for redelegation.

Abolish the Office of Telecommunications Policy and transfer functions to the Department of Commerce and to the President for redelegation.

Create an Assistant Secretary of Commerce for Communications and Information.

Vest some Office of Science and Technology Policy functions in the President for redelegation.

Abolish the Economic Opportunity Council and vest those functions in the President for redelegation.

Transfer the Committee Management Secretariat function of the Office of Management and Budget to the President for redelegation.

Make other incidental transfers attendant to those mentioned above.

Each of the changes set forth in the plan accompanying this message is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. I have taken care to determine that all functions abolished by the plan are done so only under statutory authority provided by Section 903(b) of Title 5 of the United States Code. The provisions in the plan for the appointment and pay of any head or officer of any agency have been found by me to be necessary.

As we continue our studies of other parts of the Executive Branch, we will find more ways to improve services in the EOP and elsewhere. This plan is only a beginning, but I am confident that it represents a major step toward a more efficient government that will serve the needs of the people and the President well.

JIMMY CARTER.

THE WHITE HOUSE, July 15, 1977.

REORGANIZATION PLAN NO. 2 OF 1977

42 F.R. 62461, 91 Stat. 1636

Prepared by the President and transmitted to the Senate and House of Representatives in Congress assembled, October 11, 1977,[1] pursuant to the provisions of chapter 9 of title 5 of the United States Code.[2]

INTERNATIONAL COMMUNICATION AGENCY

SECTION 1. ESTABLISHMENT OF THE INTERNATIONAL COMMUNICATION AGENCY

There is hereby established in the executive branch an agency to be known as the International Communication Agency (the "Agency").

SEC. 2. DIRECTOR

The Agency shall be headed by a Director (the "Director"), who shall serve as the principal advisor to the President, the National Security Council, and the Secretary of State on the functions vested in the Director. The Director shall report to the President and the Secretary of State. Under the direction of the Secretary of State, the Director shall have primary responsibility within the Government for the exercise of the functions vested in the Director. The Director shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to receive compensation at the rate now or hereafter prescribed by law for Level II of the Executive Schedule [5 U.S.C. 5313].

SEC. 3. DEPUTY DIRECTOR

A Deputy Director shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall act for, and exercise the powers of, the Director during the Director's absence or disability or during a vacancy in said office and, in addition, shall perform such duties and exercise such powers as the Director may from time to time prescribe. The Deputy Director shall be entitled to receive compensation at the rate now or hereafter prescribed by law for Level III of the Executive Schedule [5 U.S.C. 5314].

SEC. 4. ASSOCIATE DIRECTORS

The President, by and with the advice and consent of the Senate, may appoint four Associate Directors, who shall perform such duties and exercise such powers as the Director may from time to time prescribe. One Associate Director shall be known as the Associate Director for Educational and Cultural Affairs and one Associate Director shall be known as the Associate Director for Broadcasting. Each Associate Director shall be entitled to receive compensation at the rate now or hereafter prescribed by law for Level IV of the Executive Schedule [5 U.S.C. 5315].

SEC. 5. PERFORMANCE OF FUNCTIONS

The Director may establish within the Agency bureaus, offices, divisions and other units. The Director may from time to time make provision for the performance of any function of the Director by any officer, employee or unit of the Agency.

SEC. 6. NEGOTIATIONS

(a) Under the direction of the Secretary of State, the Director shall prepare for, manage and conduct negotiations with representatives of foreign states or international organizations on matters for which responsibility is vested in the Director or in the Agency.

(b) For the purpose of conducting such negotiations, or for the purpose of exercising any other authority vested in the Director or in the Agency, the Director may

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[1] Actually transmitted Oct. 12, 1977.

[2] As amended Nov. 1, 1977 and Nov. 3, 1977.

(1) consult and communicate with or direct the consultation and communication with representatives of other nations or of international organizations; and

(2) communicate in the name of the Secretary of State with diplomatic representatives of the United States in this country and abroad.

SEC. 7. TRANSFER OF FUNCTIONS

(a) There are hereby transferred to the Director all functions vested in the President, the Secretary of State, the Department of State, the Director of the United States Information Agency, and the United States Information Agency pursuant to the following:

(1) the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1431-1479), except to the extent that any function in sections 302, 401, or 602 [sections 1452, 1456, or 1467 of Title 22, Foreign Relations and Intercourse] is vested in the President;

(2) the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451-2458a), except for: (A) such functions as are vested by sections 102(b)(6), 102(b)(10), 104(a), 104(e)(1), 104(e)(2), 104(f), 104(g), 105(a), 105(b), 105(c), 106(a), 108 [sections 2452(b)(6), (b)(10), 2454(a), (e)(1), (2), (f), (g), 2455(a), (b), (c), 2456(a), 2458 of Title 22]; (B) to the extent that such functions were assigned to the Secretary of Health, Education and Welfare immediately prior to the effective date of this Reorganization Plan, sections 104(b), 105(d)(2), 105(f), 106(d), and 106(f) [2454(b), 2455(d)(2), (f), 2456(d), (f) of Title 22]; and (C) to the extent that any function therein is vested in the President or the Secretary of State, sections 106(b) and 106(c) [2456(b), (c) of Title 22].

(3) Public Law 90-494 (22 U.S.C. 929-932, 1221-1234), to the extent that such functions are vested in the Director of the United States Information Agency;

(4) Sections 522(3), 692(1), and 803(a)(4) of the Foreign Service Act of 1946, as amended (22 U.S.C. 922(3), 1037a(1), and 1063(a)(4)), to the extent such functions are vested in the Director of the United States Information Agency or in the United States Information Agency.

(5) Section 4 of the United States Information Agency Appropriations Authorization Act of 1973, Public Law 93-168 [Nov. 29, 1973, 87 Stat. 689];

(6)(A) Sections 107(b), 204 and 205 of the Foreign Relations Authorization Act, Fiscal Year 1978, Public Law 95-105, 91 Stat. 844 [Aug. 17, 1977]; and (B) to the extent such functions are vested in the Director of the United States Information Agency, section 203 of the Act;

(7) the Center for Cultural and Technical Interchange Between East and West Act of 1960 (22 U.S.C. 2054-2057);

(8) Sections 101(a)(15)(J) and 212(e) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J), 1182(e));

(9) Section 2(a)(1) of Reorganization Plan No. 8 of 1953 (22 U.S.C. 1461 note);

(10) Section 3(a) of the Arts and Artifacts Indemnity Act (20 U.S.C. 972(a));

(11) Section 7 of the Act of June 15, 1951, c. 138, 65 Stat. 71 (50 U.S.C. App. 2316);

(12) Section 9(b) of the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 958(b)), to the extent that such functions are vested in the Secretary of State;

(13) Section 112(a) of the Higher Education Act of 1965 (20 U.S.C. 1009(a)), to the extent such functions are vested in the Department of State;

(14) Section 3(b)(1) of the Woodrow Wilson Memorial Act of 1968 (20 U.S.C. 80f(b)(1));

(15) Section 201 of Public Law 89-665, as amended by section 201(5) of Public Law 94-422 (16 U.S.C. 470i(a)(9));

(16) The third proviso in the twenty-third unnumbered paragraph of title V of Public Law 95-86 (headed "UNITED STATES INFORMATION AGENCY, SALARIES AND EXPENSES"), 91 Stat. 440-41 [Aug. 2, 1977];

(17) The twentieth unnumbered paragraph of title I of Public Law 95-86 (headed "CENTER FOR CULTURAL AND TECHNICAL INTERCHANGE BETWEEN EAST AND WEST"), 91 Stat. 424;

(18) Sections 4(d)(1)(F), 4(f)(1)(F), 4(g)(1)(F), and 4(h)(1)(F) of the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 295(d)(1)(F), 295(f)(1)(F), 295(g)(1)(F), and 295(h)(1)(F)); and

(19) Sections 1, 2, and 3 of the Act of July 9, 1949, c. 301, 63 Stat. 408 (22 U.S.C. 2681-2683).

(b) There are hereby transferred to the Director all functions vested in the Assistant Secretary of State for Public Affairs pursuant to Section 2(a) of the John F. Kennedy Center Act (20 U.S.C. 76h(a)).

(c) The Director shall insure that the scholarly integrity and nonpolitical character of educational and cultural exchange activities vested in the Director are maintained.

SEC. 8. ESTABLISHMENT OF THE UNITED STATES ADVISORY COMMISSION ON INTERNATIONAL COMMUNICATION, CULTURAL AND EDUCATIONAL AFFAIRS

(a) There is hereby established an advisory commission, to be known as the United States Advisory Commission on International Communication, Cultural and Educational Affairs (the "Commission"). The Commission shall consist of seven members who shall be appointed by the President, by and with the advice and consent of the Senate. The members of the Commission shall represent the public interest and shall be selected from the cross section of educational, communications, cultural, scientific, technical, public service, labor and business and professional backgrounds. Not more than four members shall be from any one political party. The term of each member shall be three years except that of the original seven appointments, two shall be for a term of one year and two shall be for a term of two years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed shall be appointed for the remainder of such term. Upon the expiration of a member's term of office, such member may continue to serve until a successor is appointed and has qualified. The President shall designate a member to chair the Commission.

(b) The functions now vested in the United States Advisory Commission on Information and in the United States Advisory Commission on International Educational and Cultural Affairs under sections 601 through 603 and 801(6) of the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1466-1468, 1471(6)), and under sections 106(b) and 107 of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2456(b), 2457), respectively, are hereby consolidated and vested in the Commission, as follows:

The Commission shall formulate and recommend to the Director, the Secretary of State, and the President policies and programs to carry out the functions vested in the Director or the Agency, and shall appraise the effectiveness of policies and programs of the Agency. The Commission shall submit to the Congress, the President, the Secretary of State and the Director annual reports on programs and activities carried on by the Agency, including appraisals, where feasible, as to the effectiveness of the several programs. The Commission shall also include in such reports such recommendations as shall have been made by the Commission to the Director for effectuating the purposes of the Agency, and the action taken to carry out such recommendations. The Commission may also submit such other reports to the Congress as it deems appropriate, and shall make reports to the public in the United States and abroad to develop a better understanding of and support for the programs conducted by the Agency. The Commission's reports to the Congress shall include assessments of the degree to which the scholarly integrity and nonpolitical character of the educational and cultural exchange activities vested in the Director have been maintained,

and assessments of the attitudes of foreign scholars and governments regarding such activities.

(c) The Commission shall have no authority with respect to the Board of Foreign Scholarships or the United States National Commission for UNESCO.

SEC. 9. ABOLITIONS AND SUPERSESSIONS

(a) The following are hereby abolished:

(1) The United States Information Agency, including the offices of Director, Deputy Director, Deputy Director (Policy and Plans) (5 U.S.C. 5316(67)), Associate Director (Policy and Plans) (5 U.S.C. 5316(103)), and additional offices created by section 1(d) of Reorganization Plan No. 8 of 1953 (22 U.S.C. 1461 note), of the United States Information Agency, provided that, pending the initial appointment of the Director, Deputy Director and Associate Directors of the Agency their functions shall be performed temporarily, but not for a period in excess of sixty (60) days, by such officers of the Department of State or of the United States Information Agency as the President shall designate;

(2) One of the offices of Assistant Secretary of State provided for in section 1 of the Act of May 26, 1949, c. 143, 63 Stat. 111, as amended (22 U.S.C. 2652), and in section 5315(22) of title 5 of the United States Code;

(3) The United States Advisory Commission on International Educational and Cultural Affairs (22 U.S.C. 2456(b));

(4) The United States Advisory Commission on Information (22 U.S.C. 1466–1468);

(5) All functions vested in or related to the United States Advisory Commission on International Educational and Cultural Affairs and the United States Advisory Commission on Information that are not transferred to the Director by section 7 or consolidated in the Commission by section 8 of this Reorganization Plan;

(6) The Advisory Committee on the Arts, all functions thereof, and all functions relating thereto (22 U.S.C. 2456(c)); and

(7) The functions vested in the Secretary of State by section 3(e) of the Act of August 1, 1956, c. 841, 70 Stat. 890 (22 U.S.C. 2670(e)).

(b) Sections 1, 2(a)(2), 2(b), 2(c)(3), 3, 4, and 5 of Reorganization Plan No. 8 of 1953 (22 U.S.C. 1461 note) are hereby superseded.

SEC. 10. OTHER TRANSFERS

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred or consolidated by this Reorganization Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate department, agency, or commission at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of all agencies, commissions, and offices abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SEC. 11. EFFECTIVE DATE

This Reorganization Plan shall become effective at such time or times, on or before July 1, 1978, as the President shall specify, but not sooner than the earliest time allowable under section 906 of title 5 of the United States Code.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 2 of 1977 to consolidate certain international communication, educational and cultural, and broadcasting activities of the United States Government. I am acting under the authority vested in me by the Reorganization Act, chapter 9 of title 5 of the United States Code. I am also acting pursuant to section 501 of the Foreign Relations Authorization Act, Fiscal Year 1978 (Public Law 95-105) [Aug. 17, 1977, 91 Stat. 857], which provides that my recommendations for reorganizing these activities be transmitted by October 31, 1977.

This reorganization will consolidate into a new agency, to be known as the Agency for International Communication, the functions now exercised by the State Department's Bureau of Educational and Cultural Affairs and the United States Information Agency.

The principal aspects of this proposal are:

—The new agency will take over USIA's international communications programs (including the Voice of America) and the international educational and cultural exchange activities now conducted by the Bureau of Educational and Cultural Affairs.

—The agency's Director will be the principal advisor on international information and exchange activities to the President, the National Security Council, and the Secretary of State. Under the direction of the Secretary of State, the Director will have primary responsibility within the Government for the conduct of such activities. The Director, the Deputy Director and the Associate Directors of the new agency will be confirmed by the Senate.

—The two commissions that now advise USIA and the Bureau of Educational and Cultural Affairs will be combined into a single seven-member commission. Members of this nonpartisan commission will be chosen from fields related to the agency's mission. The commissioners will be appointed by the President and confirmed by the Senate.

The purpose of this reorganization is to broaden our informational, educational and cultural intercourse with the world, since this is the major means by which our government can inform others about our country, and inform ourselves about the rest of the world.

The new Agency for International Communication will play a central role in building these two-way bridges of understanding between our people and the other peoples of the world. Only by knowing and understanding each other's experiences can we find common ground on which we can examine and resolve our differences.

The new agency will have two distinct but related goals:

To tell the world about our society and policies—in particular our commitment to cultural diversity and individual liberty.

To tell ourselves about the world, so as to enrich our own culture as well as to give us the understanding to deal effectively with problems among nations.

As the world becomes more and more interdependent, such mutual understanding becomes increasingly vital. The aim of this reorganization, therefore, is a more effective dialogue among peoples of the earth. Americans—mostly immigrants or the descendants of immigrants—are particularly well suited to enter into such an undertaking. We have already learned much from those who have brought differing values, perspectives and experiences to our shores. And we must continue to learn.

Thus the new agency will lay heavy emphasis on listening to others, so as to learn something of their motivations and aspirations, their histories and cultures.

Several principles guided me in shaping this reorganization plan. Among the most important were:

—Maintaining the integrity of the educational and cultural exchange programs is imperative. To this end, the plan retains the Board of Foreign Scholarships, whose strong leadership has done so much to insure the high quality of the educational exchange program. In addition, I intend to nominate an Associate Director who will be responsible for

the administration and supervision of educational and cultural functions consolidated in the new Agency. The responsibilities presently exercised by the Department of State in relation to the Center for Technical and Cultural Interchange Between East and West, Inc., will be transferred to the new agency without alteration.

—Keeping the Voice of America's news gathering and reporting functions independent and objective. The Voice's charter, enacted into law in 1976, provides that "VOA news will be accurate, objective, and comprehensive"; that VOA will "present a balanced and comprehensive projection of significant American thought and institutions"; and that VOA will present U.S. policies "clearly and effectively, and will also present responsible discussion and opinion on these policies." Under this Administration, VOA will be solely responsible for the content of news broadcasts—for there is no more valued coin than candor in the international marketplace of ideas. I also plan to nominate an Associate Director who will be responsible for the administration and supervision of the Voice of America.

—The new agency's activities must be straightforward, open, candid, balanced, and representative. They will not be given over to the advancement of the views of any one group, any one party or any one Administration. The agency must not operate in a covert, manipulative or propagandistic way.

—Rights of U.S. Information Agency and State Department employees must be respected. In the new agency, their career achievements will be recognized and the best possible use made of their professional skills and abilities.

The Director of the new agency will assess and advise on the impact on worldwide public opinion of American foreign policy decisions. The Agency will coordinate the international information, educational, cultural and exchange programs conducted by the U.S. Government and will be a governmental focal point for private U.S. international exchange programs. It will also play a leading role within the U.S. Government in our efforts to remove barriers to the international exchange of ideas and information.

It is not practicable to specify all of the expenditure reductions and other economies that will result from the proposed reorganization, and therefore I do not do so. The reorganization will result in greater efficiency by unifying in Washington the management of programs which are already administered in a consolidated manner in the field. For example, field officers will no longer report to two separate sets of supervisors and headquarters at home.

This plan abolishes the functions of the Advisory Committee on the Arts authorized by section 106(c) of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2456(c)). Also abolished, as a result of the consolidation of certain functions of the United States Advisory Commission on Information and the United States Advisory Commission on International Educational and Cultural Affairs in the United States Advisory Commission on International Communication, Cultural and Educational Affairs, are the functions authorized by section 603 of the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1468) (requiring submission by the United States Advisory Commission on Information of a quarterly report to the Director of USIA and a semiannual report to the Congress). The new commission will report annually and at such other times as it deems appropriate (as does the existing Advisory Commission on International Educational and Cultural Affairs). Since appointments of all members of the new commission will be on a nonpartisan basis, as has been the case with the Advisory Commission on International Educational and Cultural Affairs, the requirement of section 602(a) of the U.S. Information and Educational Exchange Act (22 U.S.C. 1467(a)) that not more than three members of the Advisory Commission on Information shall be of the same political party is abolished.

Various obsolete or superseded functions under Reorganization Plan No. 8 of 1953 (22 U.S.C. 1461 note), which created the USIA, are superseded by this plan. Finally, the Plan abolishes a provision authorizing the Secretary of State to pay the expenses of transporting the bodies of participants in exchange programs who die away from home, since State no longer will conduct such programs (22 U.S.C. 2670(e)). All functions abolished by the reorganization are done so in compliance with section 903(b) of title 5 of the United States Code.

After investigation, I have found that this reorganization is necessary to carry out the policy set forth in section 901(a) of title 5 of the United States Code. The provisions in this Plan for the appointment and pay of the Director, Deputy Director, and Associate Directors of the Agency have been found by me to be necessary by reason of the reorganization made by the plan and are at a rate applicable to comparable officers in the executive branch.

In presenting this plan, I ask the support of Congress to strengthen and simplify the machinery by which we carry out these important functions of the United States Government.

Such action will make us better able to project the great variety and vitality of American life to those abroad, and to enrich our own lives with a fuller knowledge of the vitality and variety of other societies.

The new Agency for International Communication will help us demonstrate "a decent respect for the opinions of mankind," and to deal intelligently with a world awakening to a new spirit of freedom.

JIMMY CARTER.

THE WHITE HOUSE, October 11, 1977.

REORGANIZATION PLAN NO. 1 OF 1978

43 F.R. 19807, 92 Stat. 3781

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 23, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

EQUAL EMPLOYMENT OPPORTUNITY

SECTION 1. TRANSFER OF EQUAL PAY ENFORCEMENT FUNCTIONS

All functions related to enforcing or administering Section 6(d) of the Fair Labor Standards Act, as amended (29 U.S.C. 206(d)), are hereby transferred to the Equal Employment Opportunity Commission. Such functions include, but shall not be limited to, the functions relating to equal pay administration and enforcement now vested in the Secretary of Labor, the Administrator of the Wage and Hour Division of the Department of Labor, and the Civil Service Commission pursuant to Sections 4(d)(1); 4(f); 9; 11 (a), (b), and (c); 16(b) and (c) and 17 of the Fair Labor Standards Act, as amended, (29 U.S.C. 204(d)(1); 204(f); 209; 211(a), (b), and (c); 216(b) and (c) and 217) and Section 10(b)(1) of the Portal-to-Portal Act of 1947, as amended, (29 U.S.C. 259).

SECTION 2. TRANSFER OF AGE DISCRIMINATION ENFORCEMENT FUNCTIONS

All functions vested in the Secretary of Labor or in the Civil Service Commission pursuant to Sections 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 621, 623, 626, 627, 628, 629, 630, 631, 632, 633, and 633a) are hereby transferred to the Equal Employment Opportunity Commission. All functions related to age discrimination administration and enforcement pursuant to Sections 6 and 16 of the Age Discrimination in Employment Act of 1967, as amend-

ed, (29 U.S.C. 625 and 634) are hereby transferred to the Equal Employment Opportunity Commission.

SECTION 3. TRANSFER OF EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT ENFORCEMENT FUNCTIONS

(a) All equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to Section 717(b) and (c) of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16(b) and (c)), are hereby transferred to the Equal Employment Opportunity Commission.

(b) The Equal Employment Opportunity Commission may delegate to the Civil Service Commission or its successor the function of making a preliminary determination on the issue of discrimination whenever, as a part of a complaint or appeal before the Civil Service Commission on other grounds, a Federal employee alleges a violation of Section 717 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16) provided that the Equal Employment Opportunity Commission retains the function of making the final determination concerning such issue of discrimination.

SECTION 4. TRANSFER OF FEDERAL EMPLOYMENT OF HANDICAPPED INDIVIDUALS ENFORCEMENT FUNCTIONS

All Federal employment of handicapped individuals enforcement functions and related functions vested in the Civil Service Commission pursuant to Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) are hereby transferred to the Equal Employment Opportunity Commission. The function of being co-chairman of the Interagency Committee on Handicapped Employees now vested in the Chairman of the Civil Service Commission pursuant to Section 501 is hereby transferred to the Chairman of the Equal Employment Opportunity Commission.

SECTION 5. TRANSFER OF PUBLIC SECTOR 707 FUNCTIONS

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under Section 707 of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-6) and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, are hereby transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with said Title VII. The Attorney General is authorized to delegate any function under Section 707 of said Title VII to any officer or employee of the Department of Justice.

SECTION 6. TRANSFER OF FUNCTIONS AND ABOLITION OF THE EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

All functions of the Equal Employment Opportunity Coordinating Council, which was established pursuant to Section 715 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-14), are hereby transferred to the Equal Employment Opportunity Commission. The Equal Employment Opportunity Coordinating Council is hereby abolished.

SECTION 7. SAVINGS PROVISION

Administrative proceedings including administrative appeals from the acts of an executive agency (as defined by Section 105 of Title 5 of the United States Code) commenced or being conducted by or against such executive agency will not abate by reason of the taking effect of this Plan. Consistent with the provisions of this Plan, all such proceedings shall continue before the Equal Employment Opportunity Commission otherwise unaffected by the transfers provided by this Plan. Consistent with the provisions of this Plan, the Equal Employment Opportunity Commission shall accept appeals from those executive agency actions which occurred prior to the effective date of this Plan in accordance with law and regulations in effect on such effective date. Nothing herein shall affect any right of any person to judicial review under applicable law.

SECTION 8. INCIDENTAL TRANSFERS

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate department, agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of the Council abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SECTION 9. EFFECTIVE DATE

This Reorganization Plan shall become effective at such time or times, on or before October 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I am submitting to you today Reorganization Plan No. 1 of 1978. This Plan makes the Equal Employment Opportunity Commission the principal Federal agency in fair employment enforcement. Together with actions I shall take by Executive Order, it consolidates Federal equal employment opportunity activities and lays, for the first time, the foundation of a unified, coherent Federal structure to combat job discrimination in all its forms.

In 1940 President Roosevelt issued the first Executive Order forbidding discrimination in employment by the Federal government. Since that time the Congress, the courts and the Executive Branch—spurred by the courage and sacrifice of many peoople and organizations—have taken historic steps to extend equal employment opportunity protection throughout the private as well as public sector. But each new prohibition against discrimination unfortunately has brought with it a further dispersal of Federal equal employment opportunity responsibility. This fragmentation of authority among a number of Federal agencies has meant confusion and ineffective enforcement for employees, regulatory duplication and needless expense for employers.

Fair employment is too vital for haphazard enforcement. My Administration will aggressively enforce our civil rights laws. Although discrimination in any area has severe consequences, limiting economic opportunity affects access to education, housing and health care. I, therefore, ask you to join with me to reorganize administration of the civil rights laws and to begin that effort by reorganizing the enforcement of those laws which ensure an equal opportunity to a job.

Eighteen government units now exercise important responsibilities under statutes, Executive Orders and regulations relating to equal employment opportunity:

The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 [section 2000e et seq. of Title 42, The Public Health and Welfare], which bans employment discrimination based on race, national origin, sex or religion. The EEOC acts on individual complaints and also initiates private sector cases involving a "pattern or practice" of discrimination.

The Department of Labor and 11 other agencies enforce Executive Order 11246 [set out as a note under

section 2000e of Title 42]. This prohibits discrimination in employment on the basis of race, national origin, sex, or religion and requires affirmative action by government contractors. While the Department now coordinates enforcement of this "contract compliance" program, it is actually administered by eleven other departments and agencies. The Department also administers those statutes requiring contractors to take affirmative action to employ handicapped people, disabled veterans and Vietnam veterans.

In addition, the Labor Department enforces the Equal Pay Act of 1963 [section 206(d) of Title 29, Labor], which prohibits employers from paying unequal wages based on sex, and the Age Discrimination in Employment Act of 1967 [section 621 et seq. of Title 29], which forbids age discrimination against persons between the ages of 40 and 65.

The Department of Justice litigates Title VII cases involving public sector employers—State and local governments. The Department also represents the Federal government in lawsuits against Federal contractors and grant recipients who are in violation of Federal nondiscrimination prohibitions.

The Civil Service Commission (CSC) enforces Title VII and all other nondiscrimination and affirmative action requirements for Federal employment. The CSC rules on complaints filed by individuals and monitors affirmative action plans submitted annually by other Federal agencies.

The Equal Employment Opportunity Coordinating Council includes representatives from EEOC, Labor, Justice, CSC and the Civil Rights Commission. It is charged with coordinating the Federal equal employment opportunity enforcement effort and with eliminating overlap and inconsistent standards.

In addition to these major government units, other agencies enforce various equal employment opportunity requirements which apply to specific grant programs. The Department of Treasury, for example, administers the anti-discrimination prohibitions applicable to recipients of revenue sharing funds.

These programs have had only limited success. Some of the past deficiencies include:

—inconsistent standards of compliance;
—duplicative, inconsistent paperwork requirements and investigative efforts;
—conflicts within agencies between their program responsibilities and their responsibility to enforce the civil rights laws;
—confusion on the part of workers about how and where to seek redress;
—lack of accountability.

I am proposing today a series of steps to bring coherence to the equal employment enforcement effort. These steps, to be accomplished by the Reorganization Plan and Executive Orders, constitute an important step toward consolidation of equal employment opportunity enforcement. They will be implemented over the next two years, so that the agencies involved may continue their internal reform.

Its experience and broad scope make the EEOC suitable for the role of principal Federal agency in fair employment enforcement. Located in the Executive Branch and responsible to the President, the EEOC has developed considerable expertise in the field of employment discrimination since Congress created it by the Civil Rights Act of 1964 [section 2000e-4 of Title 42]. The Commission has played a pioneer role in defining both employment discrimination and its appropriate remedies.

While it has had management problems in past administrations, the EEOC's new leadership is making substantial progress in correcting them. In the last seven months the Commission has redesigned its internal structures and adopted proven management techniques. Early experience with these procedures indicates a high degree of success in reducing and expediting new cases. At my direction, the Office of Management and Budget is actively assisting the EEOC to ensure that these reforms continue.

The Reorganization Plan I am submitting will accomplish the following:

On July 1, 1978, abolish the Equal Employment Opportunity Coordinating Council (42 U.S.C. 2000e-14) and transfer its duties to the EEOC (no positions or funds shifted).

On October 1, 1978, shift enforcement of equal employment opportunity for Federal employees from the CSC to the EEOC (100 positions and $6.5 million shifted).

On July 1, 1979, shift responsibility for enforcing both the Equal Pay Act and the Age Discrimination in Employment Act from the Labor Department to the EEOC (198 positions and $5.3 million shifted for Equal Pay; 119 positions and $3.5 million for Age Discrimination).

Clarify the Attorney General's authority to initiate "pattern or practice" suits under Title VII in the public sector.

In addition, I will issue an Executive Order on October 1, 1978, to consolidate the contract compliance program—now the responsibility of Labor and eleven "compliance agencies"—into the Labor Department (1,517 positions and $33.1 million shifted).

These proposed transfers and consolidations reduce from fifteen to three the number of Federal agencies having important equal employment opportunity responsibilities under Title VII of the Civil Rights Act of 1964 and Federal contract compliance provisions.

Each element of my Plan is important to the success of the entire proposal.

By abolishing the Equal Employment Opportunity Coordinating Council and transferring its responsibilities to the EEOC, this plan places the Commission at the center of equal employment opportunity enforcement. With these new responsibilities, the EEOC can give coherence and direction to the government's efforts by developing strong uniform enforcement standards to apply throughout the government: standardized data collection procedures, joint training programs, programs to ensure the sharing of enforcement related data among agencies, and methods and priorities for complaint and compliance reviews. Such direction has been absent in the Equal Employment Opportunity Coordinating Council.

It should be stressed, however, that affected agencies will be consulted before EEOC takes any action. When the Plan has been approved, I intend to issue an Executive Order which will provide for consultation, as well as a procedure for reviewing major disputed issues within the Executive Office of the President. The Attorney General's responsibility to advise the Executive Branch on legal issues will also be preserved.

Transfer of the Civil Service Commission's equal employment opportunity responsibilities to EEOC is needed to ensure that: (1) Federal employees have the same rights and remedies as those in the private sector and in State and local government; (2) Federal agencies meet the same standards as are required of other employers; and (3) potential conflicts between an agency's equal employment opportunity and personnel management functions are minimized. The Federal government must not fall below the standard of performance it expects of private employers.

The Civil Service Commission has in the past been lethargic in enforcing fair employment requirements within the Federal government. While the Chairman and other Commissioners I have appointed have already demonstrated their personal commitment to expanding equal employment opportunity, responsibility for ensuring fair employment for Federal employees should rest ultimately with the EEOC.

We must ensure that the transfer in no way undermines the important objectives of the comprehensive civil service reorganization which will be submitted to Congress in the near future. When the two plans take effect, I will direct the EEOC and the CSC to coordinate their procedures to prevent any duplication and overlap.

The Equal Pay Act now administered by the Labor Department, prohibits employers from paying unequal wages based on sex. Title VII of the Civil Rights Act, which is enforced by EEOC, contains a broader ban on sex discrimination. The transfer of Equal Pay responsibility from the Labor Department to the EEOC will minimize overlap and centralize enforcement of statutory prohibitions against sex discrimination in employment.

The transfer will strengthen efforts to combat sex discrimination. Such efforts would be enhanced still further by passage of the legislation pending before you, which I support, that would prohibit employers from excluding women disabled by pregnancy from participating in disability programs.

There is now virtually complete overlap in the employers, labor organizations, and employment agencies covered by Title VII and by the Age Discrimination in Employment Act. This overlap is burdensome to employers and confusing to victims of discrimination. The proposed transfer of the age discrimination program from the Labor Department to the EEOC will eliminate the duplication.

The Plan I am proposing will not affect the Attorney General's responsibility to enforce Title VII against State or local governments or to represent the Federal government in suits against Federal contractors and grant recipients. In 1972, the Congress determined that the Attorney General should be involved in suits against State and local governments. This proposal reinforces that judgment and clarifies the Attorney General's authority to initiate litigation against State or local governments engaged in a "pattern or practice" of discrimination. This in no way diminishes the EEOC's existing authority to investigate complaints filed against State or local governments and, where appropriate, to refer them to the Attorney General. The Justice Department and the EEOC will cooperate so that the Department sues on valid referrals, as well as on its own "pattern or practice" cases.

A critical element of my proposals will be accomplished by Executive Order rather than by the Reorganization Plan. This involves consolidation in the Labor Department of the responsibility to ensure that Federal contractors comply with Executive Order 11246. Consolidation will achieve the following: promote consistent standards, procedures, and reporting requirements; remove contractors from the jurisdiction of multiple agencies; prevent an agency's equal employment objectives from being outweighed by its procurement and construction objectives; and produce more effective law enforcement through unification of planning, training and sanctions. By 1981, after I have had an opportunity to review the manner in which both the EEOC and the Labor Department are exercising their new responsibilities, I will determine whether further action is appropriate.

Finally, the responsibility for enforcing grant-related equal employment provisions will remain with the agencies administering the grant programs. With the EEOC acting as coordinator of Federal equal employment programs, we will be able to bring overlap and duplication to a minimum. We will be able, for example, to see that a university's employment practices are not subject to duplicative investigations under both Title IX of the Education Amendments of 1972 [section 1681 et seq. of Title 20, Education] and the contract compliance program. Because of the similarities between the Executive Order program and those statutes requiring Federal contractors to take affirmative action to employ handicapped individuals and disabled and Vietnam veterans, I have determined that enforcement of these statutes should remain in the Labor Department.

Each of the changes set forth in the Reorganization Plan accompanying this message is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. I have taken care to determine that all functions abolished by the Plan are done only under the statutory authority provided by Section 903(b) of Title 5 of the United States Code.

I do not anticipate that the reorganizations contained in this Plan will result in any significant change in expenditures. They will result in a more efficient and manageable enforcement program.

The Plan I am submitting is moderate and measured. It gives the Equal Employment Opportunity Commission—an agency dedicated solely to this purpose—the primary Federal responsibility in the area of job discrimination, but it is designed to give this agency sufficient time to absorb its new responsibilities. This reorganization will produce consistent agency standards, as well as increased accountability. Combined with the intense commitment of those charged with these responsibilities, it will become possible for us to accelerate this nation's progress in ensuring equal job opportunities for all our people.

JIMMY CARTER.

THE WHITE HOUSE, February 23, 1978.

REORGANIZATION PLAN NO. 2 OF 1978

43 F.R. 36037, 92 Stat. 3784

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 23, 1978,[1] pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

PART I. OFFICE OF PERSONNEL MANAGEMENT

SECTION 101. ESTABLISHMENT OF THE OFFICE OF PERSONNEL MANAGEMENT AND ITS DIRECTOR AND OTHER MATTERS

There is hereby established as an independent establishment in the Executive Branch, the Office of Personnel Management (the "Office"). The head of the Office shall be the Director of the Office of Personnel Management (the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level II of the Executive Schedule. The position referred to in 5 U.S.C. 5109(b) is hereby abolished.

SECTION 102. TRANSFER OF FUNCTIONS

Except as otherwise specified in this Plan, all functions vested by statute in the United States Civil Service Commission, or the Chairman of said Commission, or the Boards of Examiners established by 5 U.S.C. 1105 are hereby transferred to the Director of the Office of Personnel Management.

SECTION 103. DEPUTY DIRECTOR AND ASSOCIATE DIRECTORS

(a) There shall be within the Office a Deputy Director who shall be appointed by the President by and with the advice and consent of the Senate and who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

(b) There shall be within the Office not more than five Associate Directors, who shall be appointed by the Director in the excepted service, shall have such titles as the Director shall from time to time determine, and shall receive compensation at the rate now or hereafter provided for level IV of the Executive Schedule [5 U.S.C. 5315].

SECTION 104. FUNCTIONS OF THE DIRECTOR

The functions of the Director shall include, but not be limited to, the following:

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[1] As amended July 11, 1978.

(a) Aiding the President, as the President may request, in preparing such rules as the President prescribes, for the administration of civilian employment now within the jurisdiction of the United States Civil Service Commission;

(b) Advising the President, as the President may request, on any matters pertaining to civilian employment now within the jurisdiction of the United States Civil Service Commission;

(c) Executing, administering and enforcing the Civil Service rules and regulations of the President and the Office and the statutes governing the same, and other activities of the Office including retirement and classification activities except to the extent such functions remain vested in the Merit Systems Protection Board pursuant to Section 202 of this Plan, or are transferred to the Special Counsel pursuant to Section 204 of this Plan. The Director shall provide the public, where appropriate, a reasonable opportunity to comment and submit written views on the implementation and interpretation of such rules and regulations;

(d) Conducting or otherwise providing for studies and research for the purpose of assuring improvements in personnel management, and recommending to the President actions to promote an efficient Civil Service and a systematic application of the merit system principles, including measures relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separations of employees; and

(e) Performing the training responsibilities now performed by the United States Civil Service Commission as set forth in 5 U.S.C. Chapter 41.

Section 105. Authority to Delegate Functions

The Director may delegate, from time to time, to the head of any agency employing persons in the competitive service, the performance of all or any part of those functions transferred under this Plan to the Director which relate to employees, or applicants for employment, of such agency.

PART II. MERIT SYSTEMS PROTECTION BOARD

Section 201. Merit Systems Protection Board

(a) The United States Civil Service Commission is hereby redesignated the Merit Systems Protection Board. The Commissioners of the United States Civil Service Commission are hereby redesignated as members of the Merit Systems Protection Board (the "Board").

(b) The Chairman of the Board shall be its chief executive and administrative officer. The position of Executive Director, established by 5 U.S.C. 1103(d), is hereby abolished.

Section 202. Functions of the Merit Systems Protection Board and Related Matters

(a) There shall remain with the Board the hearing, adjudication, and appeals functions of the United States Civil Service Commission specified in 5 U.S.C. 1104(b)(4) (except hearings, adjudications and appeals with respect to examination ratings), and also found in the following statutes:

(i) 5 U.S.C. 1504-1507, 7325, 5335, 7521, 7701 and 8347(d);

(ii) 38 U.S.C. 2023

(b) There shall remain with the Board the functions vested in the United States Civil Service Commission, or its Chairman, pursuant to 5 U.S.C. 1104(a)(5) and (b)(4) to enforce decisions rendered pursuant to the authorities described in Subsection (a) of this Section.

(c) Any member of the Board may request from the Director, in connection with a matter then pending before the Board for adjudication, an advisory opinion concerning interpretation of rules, regulations, or other policy directives promulgated by the Office of Personnel Management.

(d) Whenever the interpretation or application of a rule, regulation, or policy directive of the Office of Personnel Management is at issue in any hearing, adjudication, or appeal before the Board, the Board shall promptly notify the Director, and the Director shall have the right to intervene in such proceedings.

(e) The Board shall designate individuals to chair performance rating boards established pursuant to 5 U.S.C. 4305.

(f) The Chairman of the Board shall designate representatives to chair boards of review established pursuant to 5 U.S.C. 3383(b).

(g) The Board may from time to time conduct special studies relating to the Civil Service, and to other merit systems in the Executive Branch and report to the President and the Congress whether the public interest in a workforce free of personnel practices prohibited by law or regulations is being adequately protected. In carrying out this function the Board shall make such inquiries as may be necessary, and, to the extent permitted by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed. The Board shall make such recommendations to the President and the Congress as it deems appropriate.

(h) The Board may delegate the performance of any of its administrative functions to any officer or employee of the Board.

(i) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. The Board may issue rules and regulations, consistent with statutory requirements, defining its review procedures, including the time limits within which an appeal must be filed and the rights and responsibilities of the parties to an appeal. All regulations of the Board shall be published in the Federal Register.

Section 203. Savings Provision

The Board shall accept appeals from agency actions effected prior to the effective date of this Plan. On the effective date of Part II of this Plan, proceedings then before the Federal Employee Appeals Authority shall continue before the Board; proceedings then before the Appeals Review Board and proceedings then before the United States Civil Service Commission on appeal from decisions of the Appeals Review Board shall continue before the Board; other employee appeals before boards or other bodies pursuant to law or regulation shall continue to be processed pursuant to those laws or regulations. Nothing in this section shall affect the right of a Federal employee to judicial review under applicable law.

Section 204. The Special Counsel

(a) There shall be a Special Counsel to the Board appointed for a term of four years by the President by and with the advice and consent of the Senate, who shall be compensated as now or hereafter provided for level IV of the Executive Schedule.

(b) There are hereby transferred to the Special Counsel all functions with respect to investigations relating to violations of 5 U.S.C. Chapter 15; 5 U.S.C. Subchapter III of Chapter 73 (Political Activities); and 5 U.S.C. 552(a)(4)(F) (public information).

(c) The Special Counsel may investigate, pursuant to 5 U.S.C. 1303, allegations of personnel practices which are prohibited by law or regulation.

(d) When in the judgment of the Special Counsel, such personnel practices exist, he shall report his findings and recommendations to the Chairman of the Merit Systems Protection Board, the agency affected, and to the Office of Personnel Management, and may report such findings to the President.

(e) When in the judgment of the Special Counsel, the results of an investigation would warrant the taking of disciplinary action against an employee who

is within the jurisdiction of the Board, the Special Counsel shall prepare charges against such employee and present them with supporting documentation to the Board. Evidence supporting the need for disciplinary action against a Presidential appointee shall be submitted by the Special Counsel to the President.

(f) The Special Counsel may appoint personnel necessary to assist in the performance of his functions.

(g) The Special Counsel shall have the authority to prescribe rules and regulations relating to the receipt and investigation of matters under his jurisdiction. Such regulations shall be published in the FEDERAL REGISTER.

(h) The Special Counsel shall not issue advisory opinions.

PART III. FEDERAL LABOR RELATIONS AUTHORITY

SECTION 301. ESTABLISHMENT OF THE FEDERAL LABOR RELATIONS AUTHORITY

(a) There is hereby established, as an independent establishment in the Executive Branch, the Federal Labor Relations Authority (the "Authority"). The Authority shall be composed of three members, one of whom shall be Chairman, not more than two of whom may be adherents of the same political party, and none of whom may hold another office or position in the Government of the United States except where provided by law or by the President.

(b) Members of the Authority shall be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member to serve as Chairman of the Authority, who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule [5 U.S.C. 5314]. The other members shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule [5 U.S.C. 5315].

(c) The initial members of the Authority shall be appointed as follows: one member for a term of two years; one member for a term of three years; and the Chairman for a term of four years. Thereafter, each member shall be appointed for a term of four years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) The Authority shall make an annual report on its activities to the President for transmittal to Congress.

SECTION 302. ESTABLISHMENT OF THE GENERAL COUNSEL OF THE AUTHORITY

There shall be a General Counsel of the Authority, who shall be appointed by the President, by and with the advice and consent of the Senate for a term of four years, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule. The General Counsel shall perform such duties as the Authority shall from time to time prescribe, including but not limited to the duty of determining and presenting facts required by the Authority in order to decide unfair labor practice complaints.

SECTION 303. THE FEDERAL SERVICE IMPASSES PANEL

The Federal Service Impasses Panel, established under Executive Order 11491, as amended [set out as a note under section 7101 of this title], (the "Panel") shall continue, and shall be a distinct organizational entity within the Authority.

SECTION 304. FUNCTIONS

Subject to the provisions of Section 306, the following functions are hereby transferred:

(a) To the Authority—

(1) The functions of the Federal Labor Relations Council pursuant to Executive Order 11491, as amended [set out as a note under Section 7101 of this title];

(2) The functions of the Civil Service Commission under Sections 4(a) and 6(e) of Executive Order 11491, as amended;

(3) The functions of the Assistant Secretary of Labor for Labor-Management Relations, under Executive Order 11491, as amended, except for those functions related to alleged violations of the standards of conduct for labor organizations pursuant to Section 6(a)(4) of said Executive Order; and,

(b) to the Panel—the functions and authorities of the Federal-Service Impasses Panel, pursuant to Executive Order 11491, as amended.

SECTION 305. AUTHORITY DECISIONS

The decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review.

SECTION 306. OTHER PROVISIONS

Unless and until modified, revised, or revoked, all policies, regulations, and procedures established, and decisions issued, under Executive Order 11491, as amended [set out as a note under section 7101 of this title], shall remain in full force and effect. There is hereby expressly reserved to the President the power to modify the functions transferred to the Federal Labor Relations Authority and the Federal Service Impasses Panel pursuant to Section 304 of this Plan.

SECTION 307. SAVINGS PROVISION

All matters which relate to the functions transferred by Section 304 of this Plan, and which are pending on the effective date of the establishment of the Authority before the Federal Labor Relations Council, the Vice Chairman of the Civil Service Commission, or the Assistant Secretary of Labor for Labor-Management Relations shall continue before the Authority under such rules and procedures as the Authority shall prescribe. All such matters pending on the effective date of the establishment of the Authority before the Panel, shall continue before the Panel under such rules and procedures as the Panel shall prescribe.

PART IV. GENERAL PROVISIONS

SECTION 401. INCIDENTAL TRANSFER

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SECTION 402. INTERIM OFFICERS

(a) The President may authorize any persons who, immediately prior to the effective date of this Plan, held positions in the Executive Branch of the Government, to act as Director of the Office of Personnel Management, the Deputy Director of the Office of Personnel Management, the Special Counsel, the Chairman and other members of the Federal Labor Relations Authority, the Chairman and other members of the Federal Service Impasses Panel, or the General Counsel of the Authority, until those offices are for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment, as the case may be.

(b) The President may authorize any such person to receive the compensation attached to the Office in respect of which that person so serves, in lieu of other compensation from the United States.

SECTION 403. EFFECTIVE DATE

The provisions of this Reorganization Plan shall become effective at such time or times, on or before January 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

On March 2nd I sent to Congress a Civil Service Reform proposal to enable the Federal government to improve its service to the American people.

Today I am submitting another part of my comprehensive proposal to reform the Federal personnel management system through Reorganization Plan No. 2 of 1978. The plan will reorganize the Civil Service Commission and thereby create new institutions to increase the effectiveness of management and strengthen the protection of employee rights.

The Civil Service Commission has acquired inherently conflicting responsibilities: to help manage the Federal Government and to protect the rights of Federal employees. It has done neither job well. The Plan would separate the two functions.

OFFICE OF PERSONNEL MANAGEMENT

The positive personnel management tasks of the government—such as training, productivity programs, examinations, and pay and benefits administration—would be the responsibility of an Office of Personnel Management. Its Director, appointed by the President and confirmed by the Senate, would be responsible for administering Federal personnel matters except for Presidential appointments. The Director would be the government's principal representative in Federal labor relations matters.

MERIT SYSTEMS PROTECTION BOARD

The adjudication and prosecution responsibilities of the Civil Service Commission will be performed by the Merit Systems Protection Board. The Board will be headed by a bipartisan panel of three members appointed to six-year, staggered terms. This Board would be the first independent and institutionally impartial Federal agency solely for the protection of Federal employees.

The Plan will create, within the Board, a Special Counsel to investigate and prosecute political abuses and merit system violations. Under the civil service reform legislation now being considered by the Congress, the Counsel would have power to investigate and prevent reprisals against employees who report illegal acts—the so-called "whistleblowers." The Council would be appointed by the President and confirmed by the Senate.

FEDERAL LABOR RELATIONS AUTHORITY

An Executive Order now vests existing labor-management relations in a part-time Federal Labor-Relations Council, comprised of three top government managers; other important functions are assigned to the Assistant Secretary of Labor for Labor-Management Relations. This arrangement is defective because the Council members are part-time, they come exclusively from the ranks of management and their jurisdiction is fragmented.

The Plan I submit today would consolidate the central policymaking functions in labor-management relations now divided between the Council and the Assistant Secretary into one Federal Labor Relations Authority. The Authority would be composed of three full-time members appointed by the President with the advice and consent of the Senate. Its General Counsel, also appointed by the President and confirmed by the Senate, would present unfair labor practice complaints. The Plan also provides for the continuance of the Federal Service Impasses Panel within the Authority to resolve negotiating impasses between Federal employee unions and agencies.

The cost of replacing the Civil Service Commission can be paid by our present resources. The reorganization itself would neither increase nor decrease the costs of personnel management throughout the government. But taken together with the substantive reforms I have proposed, this Plan will greatly improve the government's ability to manage programs, speed the delivery of Federal services to the public, and aid in executing other reorganizations I will propose to the Congress, by improving Federal personnel management.

Each of the provisions of this proposed reorganization would accomplish one or more of the purposes set forth in 5 U.S.C. 901(a). No functions are abolished by the Plan, but the offices referred to in 5 U.S.C. 5109(b) and 5 U.S.C. 1103(d) are abolished. The portions of the Plan providing for the appointment and pay for the head and one or more officers of the Office of Personnel Management, the Merit Systems Protection Board, the Federal Labor Relations Authority and the Federal Service Impasses Panel, are necessary to carry out the reorganization. The rates of compensation are comparable to those for similar positions within the Executive Branch.

I am confident that this Plan and the companion civil service reform legislation will both lead to more effective protection of Federal employees' legitimate rights and a more rewarding workplace. At the same time the American people will benefit from a better managed, more productive and more efficient Federal Government.

JIMMY CARTER.

THE WHITE HOUSE, May 23, 1978.

REORGANIZATION PLAN NO. 3 OF 1978

43 F.R. 41943, 92 Stat. 3790

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 19, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

PART I. FEDERAL EMERGENCY MANAGEMENT AGENCY

SECTION 101. ESTABLISHMENT OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY

There is hereby established as an independent establishment in the Executive Branch, the Federal Emergency Management Agency (the "Agency").

SECTION 102. THE DIRECTOR

The Agency shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for level II of the Executive Schedule [5 U.S.C. 5313].

SECTION 103. THE DEPUTY DIRECTOR

There shall be within the Agency a Deputy Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for level IV of the Executive Schedule [5 U.S.C. 5315]. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of tne Director or in the event of a vacancy in the Office of the Director.

SECTION 104. ASSOCIATE DIRECTORS

There shall be within the Agency not more than four Associate Directors, who shall be appointed by the President, by and with the advice and consent of the Senate, two of whom shall be compensated at the rate now or hereafter prescribed by law for level IV of the Executive Schedule [5 U.S.C. 5315], one of whom shall be compensated at the rate now or hereafter pre-

scribed by law for level V of the Executive Schedule [5 U.S.C. 5316] and one of whom shall be compensated at the rate now or hereafter prescribed by law for GS-18 of the General Schedule [set out under 5 U.S.C. 5332]. The Associate Directors shall perform such functions as the Director may from time to time prescribe.

SECTION 105. REGIONAL DIRECTORS

There shall be within the Agency ten regional directors who shall be appointed by the Director in the excepted service and shall be compensated at the rate now or hereafter prescribed by law for GS-16 of the General Schedule [set out under 5 U.S.C. 5332].

SECTION 106. PERFORMANCE OF FUNCTIONS

The Director may establish bureaus, offices, divisions, and other units within the Agency. The Director may from time to time make provision for the performance of any function of the Director by any officer, employee, or unit of the Agency.

PART II. TRANSFER OF FUNCTIONS

SECTION 201. FIRE PREVENTION

There are hereby transferred to the Director all functions vested in the Secretary of Commerce, the Administrator and Deputy Administrator of the National Fire Prevention and Control Administration, and the Superintendent of the National Academy for Fire Prevention and Control pursuant to the Federal Fire Prevention and Control Act of 1974, as amended, (15 U.S.C. 2201 through 2219); exclusive of the functions set forth at Sections 18 and 23 of the Federal Fire Prevention and Control Act (15 U.S.C. 278(f) and 1511).

SECTION 202. FLOOD AND OTHER MATTERS

There are hereby transferred to the Director all functions vested in the Secretary of Housing and Urban Development pursuant to the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended, (42 U.S.C. 2414 and 42 U.S.C. 4001 through 4128), and Section 1 of the National Insurance Development Act of 1975, as amended, (89 Stat. 68) [set out as a note under 12 U.S.C. 1749bbb].

SECTION 203. EMERGENCY BROADCAST SYSTEM

There are hereby transferred to the Director all functions concerning the Emergency Broadcast System, which were transferred to the President and all such functions transferred to the Secretary of Commerce, by Reorganization Plan Number 1.

PART III. GENERAL PROVISIONS

SECTION 301. TRANSFER AND ABOLISHMENT OF AGENCIES AND OFFICERS

The National Fire Prevention and Control Administration and the National Academy for Fire Prevention and Control and the positions of Administrator of said Administration and Superintendent of said Academy are hereby transferred to the Agency. The position of Deputy Administrator of said Administration (established by 15 U.S.C. 2204(c)) is hereby abolished.

SECTION 302. INCIDENTAL TRANSFERS

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SECTION 303. INTERIM OFFICERS

The President may authorize any persons who, immediately prior to the effective date of this Plan, held positions in the Executive Branch to which they were appointed by and with the advice and consent of the Senate, to act as Director, Deputy Director, and Associate Directors of the Agency, until those offices are for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment, as the case may be. The President may authorize any such person to receive the compensation attached to the Office in respect of which that person so serves, in lieu of other compensation from the United States.

SECTION 304. EFFECTIVE DATE

The provisions of this Reorganization Plan shall become effective at such time or times, on or before April 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

[Pursuant to Ex. Ord. 12127, Mar. 31, 1979, 44 F.R. 19367, this Reorg. Plan is effective Apr. 1, 1979].

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

Today I am transmitting Reorganization Plan No. 3 of 1978. The plan improves Federal emergency management and assistance. By consolidating emergency preparedness, mitigation and response activities, it cuts duplicative administrative costs and strengthens our ability to deal effectively with emergencies.

The plan, together with changes I will make through Executive action, would merge five agencies from the Departments of Defense, Commerce, HUD, and GSA into one new agency.

For the first time, key emergency management and assistance functions would be unified and made directly accountable to the President and Congress. This will reduce pressures for increased costs to serve similar goals.

The present situation has severely hampered Federal support of State and local emergency organizations and resources, which bear the primary responsibility for preserving life and property in times of calamity. This reorganization has been developed in close cooperation with State and local governments.

If approved by the Congress, the plan will establish the Federal Emergency Management Agency, whose Director shall report directly to the President. The National Fire Prevention and Control Administration (in the Department of Commerce), the Federal Insurance Administration (in the Department of Housing and Urban Development), and oversight responsibility for the Federal Emergency Broadcast System (now assigned in the Executive Office of the President) would be transferred to the Agency. The Agency's Director, its Deputy Director, and its five principal program managers would be appointed by the President with the advice and consent of the Senate.

If the plan takes effect, I will assign to the Federal Emergency Management Agency all authorities and functions vested by law in the President and presently delegated to the Defense Civil Preparedness Agency (in the Department of Defense). This will include certain engineering and communications support functions for civil defense now assigned to the U.S. Army.

I will also transfer to the new Agency all authorities and functions under the Disaster Relief Acts of 1970 and 1974 [sections 4401 et seq. and 5121 et seq. of Title 42, The Public Health and Welfare] now delegated to the Federal Disaster Assistance Administration in the Department of Housing and Urban Development.

I will also transfer all Presidential authorities and functions now delegated to the Federal Preparedness

Agency in the General Services Administration, including the establishment of policy for the national stockpile. The stockpile disposal function, which is statutorily assigned to the General Services Administration, would remain there. Once these steps have been taken by Executive Order, these three agencies would be abolished.

Several additional transfers of emergency preparedness and mitigation functions would complete the consolidation. These include:

Oversight of the Earthquake Hazards Reduction Program, under Public Law 95-124 [section 7701 et seq. of Title 42], now carried out by the Office of Science and Technology Policy in the Executive Office of the President.

Coordination of Federal activities to promote dam safety, carried by the same Office.

Responsibility for assistance to communities in the development of readiness plans for severe weather-related emergencies, including floods, hurricanes, and tornadoes.

Coordination of natural and nuclear disaster warning systems.

Coordination of preparedness and planning to reduce the consequences of major terrorist incidents. This would not alter the present responsibility of the executive branch for reacting to the incidents themselves.

This reorganization rests on several fundamental principles:

First, Federal authorities to anticipate, prepare for, and respond to major civil emergencies should be supervised by one official responsible to the President and given attention by other officials at the highest levels.

The new Agency would be in this position. To increase White House oversight and involvement still further, I shall establish by Executive Order an Emergency Management Committee, to be chaired by the Federal Emergency Management Agency Director. Its membership shall be comprised of the Assistants to the President for National Security, Domestic Affairs and Policy and Intergovernmental Relations, and the Director, Office of Management and Budget. It will advise the President on ways to meet national civil emergencies. It will also oversee and provide guidance on the management of all Federal emergency authorities, advising the Presidential on alternative approaches to improve performance and avoid excessive costs.

Second, an effective civil defense system requires the most efficient use of all available emergency resources. At the same time, civil defense systems, organization, and resources must be prepared to cope with any disasters which threaten our people. The Congress has clearly recognized this principle in recent changes in the civil defense legislation.

The communications, warning, evacuation, and public education processes involved in preparedness for a possible nuclear attack should be developed, tested, and used for major natural and accidental disasters as well. Consolidation of civil defense functions in the new Agency will assure that attack readiness programs are effectively integrated into the preparedness organizations and programs of State and local government, private industry, and volunteer organizations.

While serving an important "all hazards" readiness and response role, civil defense must continue to be fully compatible with and be ready to play an important role in our Nation's overall strategic policy. Accordingly, to maintain a link between our strategic nuclear planning and our nuclear attack preparedness planning, I will make the Secretary of Defense and the National Security Council responsible for oversight of civil defense related programs and policies of the new Agency. This will also include appropriate Department of Defense support in areas like program development, technical support, research, communications, intelligence and emergency operations.

Third, whenever possible, emergency responsibilities should be extensions of the regular missions of Federal agencies. The primary task of the Federal Emergency Management Agency will be to coordinate and plan for the emergency deployment of resources that have other routine uses. There is no need to develop a separate set of Federal skills and capabilities for those rare occasions when catastrophe occurs.

Fourth, Federal hazard mitigation activities should be closely linked with emergency preparedness and response functions. This reorganization would permit more rational decisions on the relative costs and benefits of alternative approaches to disasters by making the Federal Emergency Management Agency the focal point of all Federal hazard mitigation activities and by combining these with the key Federal preparedness and response functions.

The affected hazard mitigation activities include the Federal Insurance Administration which seeks to reduce flood losses by assisting states and local governments in developing appropriate land uses and building standards and several agencies that presently seek to reduce fire and earthquake losses through research and education.

Most State and local governments have consolidated emergency planning, preparedness and response functions on an "all hazard" basis to take advantage of the similarities in preparing for and responding to the full range of potential emergencies. The Federal Government can and should follow this lead.

Each of the changes set forth in the plan is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. The plan does not call for abolishing any functions now authorized by law. The provisions in the plan for the appointment and pay of any head or officer of the new agency have been found by me to be necessary.

I do not expect these actions to result in any significant changes in program expenditures for those authorities to be transferred. However, cost savings of between $10 to $15 million annually can be achieved by consolidating headquarters and regional facilities and staffs. The elimination (through attrition) of about 300 jobs is also anticipated.

The emergency planning and response authorities involved in this plan are vitally important to the security and well-being of our Nation. I urge the Congress to approve it.

JIMMY CARTER.

THE WHITE HOUSE, June 19, 1978.

REORGANIZATION PLAN NO. 4 OF 1978

43 F.R. 47713, 92 Stat. 3793

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, August 10, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.[1]

EMPLOYEE RETIREMENT INCOME SECURITY ACT TRANSFERS

SECTION 101. TRANSFER TO THE SECRETARY OF THE TREASURY

Except as otherwise provided in Sections 104 and 106 of this Plan, all authority of the Secretary of Labor to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of the Treasury:

(a) regulations, rulings, opinions, variances and waivers under Parts 2 [section 1051 et seq. of Title 29, Labor] and 3 [section 1081 et seq. of Title 29] of Subtitle B of Title I and subsection 1012(c) [set out as a note under section 411 of Title 26, Internal Revenue Code] of Title II of the Employee Retirement Income

[1] As amended September 20, 1978.

Security Act of 1974 (29 U.S.C. 1001 note) (hereinafter referred to as "ERISA"),

EXCEPT for sections and subsections 201, 203(a)(3)(B), 209, and 301(a) of ERISA; [sections 1051, 1053(a)(3)(B), 1059, and 1081(a) of Title 29];

(b) such regulations, rulings, and opinions which are granted to the Secretary of Labor under Sections 404, 410, 411, 412, and 413 of the Internal Revenue Code of 1954, as amended [sections 404, 410, 411, 412, and 413 of Title 26, Internal Revenue Code], (hereinafter referred to as the "Code").

EXCEPT for subsection 411(a)(3)(B) of the Code [section 411(a)(3)(B) of Title 26] and the definitions of "collectively bargained plan" and "collective bargaining agreement" contained in subsections 404 (a)(1)(B) and (a)(1)(C), 410 (b)(2)(A) and (b)(2)(B), and 413(a)(1) of the Code [sections 404(a)(1)(B) and (a)(1)(C), 410 (b)(2)(A) and (b)(2)(B), and 413(a)(1) of Title 26]; and

(c) regulations, rulings, and opinions under subsections 3(19), 3(22), 3(23), 3(24), 3(25), 3(27), 3(28), 3(29), 3(30), and 3(31) of Subtitle A of Title I of ERISA [section 1002(19), (22), (23), (24), (25), (27), (28), (29), (30), and (31) of Title 29].

SECTION 102. TRANSFERS TO THE SECRETARY OF LABOR

Except as otherwise provided in Section 105 of this Plan, all authority of the Secretary of the Treasury to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of Labor:

(a) regulations, rulings, opinions, and exemptions under section 4975 of the Code [section 4975 of Title 26],

EXCEPT for (i) subsections 4975 (a), (b), (c)(3), (d)(3), (e)(1), and (e)(7) of the Code [section 4975 (a), (b), (c)(3), (d)(3), (e)(1), and (e)(7) of Title 26]; (ii) to the extent necessary for the continued enforcement of subsections 4975 (a) and (b) [section 4975 (a) and (b) of Title 26] by the Secretary of the Treasury, subsections 4975(f)(1), (f)(2), (f)(4), (f)(5) and (f)(6) of the Code [section 4975 (f)(1), (f)(2), (f)(4), (f)(5) and (f)(6) of Title 26]; and (iii) exemptions with respect to transactions that are exempted by subsection 404(c) of ERISA [section 1104(c) of Title 29] from the provisions of Part 4 of Subtitle B of Title I of ERISA [section 1101 et seq. of Title 29]; and

(b) regulations, rulings, and opinions under subsection 2003(c) of ERISA [set out as a note under section 4975 of Title 26],

EXCEPT for subsection 2003(c)(1)(B) [set out in the note under section 4975 of Title 26].

SECTION 103. COORDINATION CONCERNING CERTAIN FIDUCIARY ACTIONS

In the case of fiduciary actions which are subject to Part 4 of Subtitle B of Title I of ERISA [section 1101 et seq. of Title 29] the Secretary of the Treasury shall notify the Secretary of Labor prior to the time of commencing any proceeding to determine whether the action violates the exclusive benefit rule of subsection 401(a) of the Code [section 401(a) of Title 26], but not later than prior to issuing a preliminary notice of intent to disqualify under that rule, and the Secretary of the Treasury shall not issue a determination that a plan or trust does not satisfy the requirements of subsection 401(a) by reason of the exclusive benefit rule of subsection 401(a), unless within 90 days after the date on which the Secretary of the Treasury notifies the Secretary of Labor of pending action, the Secretary of Labor certifies that he has no objection to the disqualification or the Secretary of Labor fails to respond to the Secretary of the Treasury. The requirements of this paragraph do not apply in the case of any termination or jeopardy assessment under sections 6851 or 6861 of the Code [section 6851 or 6861 of Title 26] that has been approved in advance by the Commissioner of Internal Revenue, or, as delegated, the Assistant Commissioner for Employee Plans and Exempt Organizations.

SECTION 104. ENFORCEMENT BY THE SECRETARY OF LABOR

The transfers provided for in Section 101 of this Plan shall not affect the ability of the Secretary of Labor, subject to the provisions of Title III of ERISA [section 1201 et seq. of Title 29] relating to jurisdiction, administration, and enforcement, to engage in enforcement under Section 502 of ERISA [section 1132 of Title 29] or to exercise the authority set forth under Title III of ERISA [section 1201 et seq. of Title 29], including the ability to make interpretations necessary to engage in such enforcement or to exercise such authority. However, in bringing such actions and in exercising such authority with respect to Parts 2 [section 1051 et seq. of Title 29] and 3 [section 1081 et seq. of Title 29] of Subtitle B of Title I of ERISA and any definitions for which the authority of the Secretary of labor is transferred to the Secretary of the Treasury as provided in Section 101 of this Plan, the Secretary of Labor shall be bound by the regulations, rulings, opinions, variances, and waivers issued by the Secretary of the Treasury.

SECTION 105. ENFORCEMENT BY THE SECRETARY OF THE TREASURY

The transfers provided for in Section 102 of this Plan shall not affect the ability of the Secretary of the Treasury, subject to the provisions of Title III of ERISA [section 1201 et seq. of Title 29] relating to jurisdiction, administration, and enforcement, (a) to audit plans and employers and to enforce the excise tax provisions of subsections 4975(a) and 4975(b) of the Code [sections 4975 (a) and (b) of Title 26], to exercise the authority set forth in subsections 502(b)(1) and 502(h) of ERISA [section 1132(b)(1) and (h) of Title 29], or to exercise the authority set forth in Title III of ERISA [section 1201 et seq. of Title 29], including the ability to make interpretations necessary to audit, to enforce such taxes, and to exercise such authority; and (b) consistent with the coordination requirements under Section 103 of this Plan, to disqualify, under section 401 of the Code [section 401 of Title 26], a plan subject to Part 4 of Subtitle B of Title I of ERISA [section 1101 et seq. of Title 29], including the ability to make the interpretations necessary to make such disqualification. However, in enforcing such excise taxes and, to the extent applicable, in disqualifying such plans the Secretary of the Treasury shall be bound by the regulations, rulings, opinions, and exemptions issued by the Secretary of Labor pursuant to the authority transferred to the Secretary of Labor as provided in Section 102 of this Plan.

SECTION 106. COORDINATION FOR SECTION 101 TRANSFERS

(a) The Secretary of the Treasury shall not exercise the functions transferred pursuant to Section 101 of this Plan to issue in proposed or final form any of the documents described in subsection (b) of this Section in any case in which such documents would significantly impact on or substantially affect collectively bargained plans unless, within 100 calendar days after the Secretary of the Treasury notifies the Secretary of Labor of such proposed action, the Secretary of Labor certifies that he has no objection or he fails to respond to the Secretary of the Treasury. The fact of such a notification, except for such notification for documents described in subsection (b)(iv) of this Section, from the Secretary of the Treasury to the Secretary of Labor shall be announced by the Secretary of Labor to the public within ten days following the date of receipt of the notification by the Secretary of Labor.

(b) The documents to which this Section applies are:

(i) amendments to regulations issued pursuant to subsections 202(a)(3), 203(b)(2) and (3)(A), 204(b)(3)(A), (C), and (E), and 210(a)(2) of ERISA [sections 1052(a)(3), 1053(b)(2) and (3)(A), 1054(b)(3)(A), (C), and (E), and 1060(a)(2) of Title 29],

and subsections 410(a)(3) and 411(a)(5), (6)(A), and (b)(3)(A), (C), and (E), 413(b)(4) and (c)(3) and 414(f) of the Code [section 410(a)(3) and 411(a)(5), (6)(A), and (b)(3)(A), (C), and (E), 413 (b)(4) and (c)(3) and 414(f) of Title 26];

(ii) regulations issued pursuant to subsections 204(b)(3)(D), 302(c)(8), and 304(a) and (b)(2)(A) of ERISA [sections 1054(b)(3)(D), 1082(c)(8), and 1084(a) and (b)(2)(A) of Title 29], and subsections 411(b)(3)(D), 412(c)(8), (e), and (f)(2)(A) of the Code [sections 411(b)(3)(D), 412(c)(8), (e), and (f)(2)(A) of Title 26]; and

(iii) revenue rulings (within the meaning of 26 CFR Section 601.201(a)(6)), revenue procedures, and similar publications, if the rulings, procedures and publications are issued under one of the statutory provisions listed in (i) and (ii) of this subsection; and

(iv) rulings (within the meaning of 26 CFR Section 601.201(a)(2)) issued prior to the issuance of a published regulation under one of the statutory provisions listed in (i) and (ii) of this subsection and not issued under a published Revenue Ruling.

(c) For those documents described in subsections (b)(i), (b)(ii) and (b)(iii) of this Section, the Secretary of Labor may request the Secretary of the Treasury to initiate the actions described in this Section 106 of this Plan.

Section 107. Evaluation

On or before January 31, 1980, the President will submit to both Houses of the Congress an evaluation of the extent to which this Reorganization Plan has alleviated the problems associated with the present administrative structure under ERISA, accompanied by specific legislative recommendations for a long-term administrative structure under ERISA.

Section 108. Incidental Transfers

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

Section 109. Effective Date

The provisions of this Reorganization Plan shall become effective at such time or times, on or before April 30, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

Message of the President

To the Congress of the United States:

Today I am submitting to the Congress my fourth Reorganization Plan for 1978. This proposal is designed to simplify and improve the unnecessarily complex administrative requirements of the Employee Retirement Income Security Act of 1974 (ERISA) [see Short Title note set out under section 1001 of Title 29, Labor]. The new plan will eliminate overlap and duplication in the administration of ERISA and help us achieve our goal of well regulated private pension plans.

ERISA was an essential step in the protection of worker pension rights. Its administrative provisions, however, have resulted in bureaucratic confusion and have been justifiably criticized by employers and unions alike. The biggest problem has been overlapping jurisdictional authority. Under current ERISA provisions, the Departments of Treasury and Labor both have authority to issue regulations and decisions.

This dual jurisdiction has delayed a good many important rulings and, more importantly, produced bureaucratic runarounds and burdensome reporting requirements.

The new plan will significantly reduce these problems. In addition, both Departments are trying to cut red tape and paperwork, to eliminate unnecessary reporting requirements, and to streamline forms wherever possible.

Both Departments have already made considerable progress, and both will continue the effort to simplify their rules and their forms.

The Reorganization Plan is the most significant result of their joint effort to modify and simplify ERISA. It will eliminate most of the jurisdictional overlap between Treasury and Labor by making the following changes:

1) Treasury will have statutory authority for minimum standards. The new plan puts all responsibility for funding, participation, and vesting of benefit rights in the Department of Treasury. These standards are necessary to ensure that employee benefit plans are adequately funded and that all beneficiary rights are protected. Treasury is the most appropriate Department to administer these provisions; however, Labor will continue to have veto power over Treasury decisions that significantly affect collectively bargained plans.

2) Labor will have statutory authority for fiduciary obligations. ERISA prohibits transactions in which self-interest or conflict of interest could occur, but allows certain exemptions from these prohibitions. Labor will be responsible for overseeing fiduciary conduct under these provisions.

3) Both Departments will retain enforcement powers. The Reorganization Plan will continue Treasury's authority to audit plans and levy tax penalties for any deviation from standards. The plan will also continue Labor's authority to bring civil action against plans and fiduciaries. These provisions are retained in order to keep the special expertise of each Department available. New coordination between the Departments will eliminate duplicative investigations of alleged violations.

This reorganization will make an immediate improvement in ERISA's administration. It will eliminate almost all of the dual and overlapping authority in the two departments and dramatically cut the time required to process applications for exemptions from prohibited transactions.

This plan is an interim arrangement. After the Departments have had a chance to administer ERISA under this new plan, the Office of Management and Budget and the Departments will jointly evaluate that experience. Based on that evaluation, early in 1980, the Administration will make appropriate legislative proposals to establish a long-term administrative structure for ERISA.

Each provision in this reorganization will accomplish one or more of the purposes in Title 5 of U.S.C. 901(a). There will be no change in expenditure or personnel levels, although a small number of people will be transferred from the Department of Treasury to the Department of Labor.

We all recognize that the administration of ERISA has been unduly burdensome. I am confident that this reorganization will significantly relieve much of that burden.

This plan is the culmination of our effort to streamline ERISA. It provides an administrative arrangement that will work.

ERISA has been a symbol of unnecessarily complex government regulation. I hope this new step will become equally symbolic of my Administration's commitment to making government more effective and less intrusive in the lives of our people.

Jimmy Carter.

The White House, August 10, 1978.